TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. 1035. 660

THE PEOPLE OF THE STATE OF CALIFORNIA,
PLAINTIFFS IN ERROR,

vs.

THE CENTRAL PACIFIC RAILROAD COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CALIFORNIA.

FILED SEPTEMBER 28, 1886.

accession 21859

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JUDD & DETWEILER, PRINTERS, WASHINGTON.

1 *Complaint.*

In the Superior Court of the State of California in and for the City and County of San Francisco.

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,
vs.
THE CENTRAL PACIFIC RAILROAD COMPANY (a Corporation).

Comes now the plaintiff and complains of the said defendant, The Central Pacific Railroad Company, and for cause of action states:

1. That the said defendant is, and for more than a year last past has been, a corporation organized and existing under the laws of said State, and during all that time has been, and still is, the owner of and operating a railroad in the counties of Alameda, Butte, Fresno, Merced, Nevada, Placer, Sacramento, San Joaquin, Santa Clara, Shasta, Sierra, Stanislaus, Sutter, Tehama, Tulare, and Yuba, in said State, and in the city and county of San Francisco, in said State.

2 2. Plaintiff avers that on the 18th day of August in the year 1883, the State board of equalization assessed the franchise, roadway, road-bed, rails, and rolling-stock of the defendant at the sum of $18,000,000.

That the board apportioned the said assessment as follows: To the county of Alameda the sum of $2,496,363.00; to the county of Butte the sum of $1,345,023.00; to the county of Fresno the sum of $1,825,047; to the county of Merced the sum of $1,098,436.00; to the county of Nevada the sum of $904,155.00; to the county of Placer the sum of $3,370,031.00; to the county of Sacramento the sum of $1,225,466.00; to the city and county of San Francisco the sum of $119,558; to the city of San Joaquin the sum of $1,696,-224.00; to the county of Santa Clara the sum of $254.060.00; to the county of Shasta the sum of $561,921.00; to the county of Sierra the sum of $64,262.00; to the county of Stanislaus the sum of $676,-397.00; to the county of Sutter the sum of $298,894.00; to the county of Tehama the sum of $1,211,717.00; to the county of Tulare the sum of $378,101.00; and to the county of Yuba the sum of $474,345.00.

3 3. That the defendant is indebted to the plaintiff for State and county taxes for the year eighteen hundred and eighty three in the following sums: For State taxes in the sum of eighty-nine thousand four hundred and sixty dollars; for county taxes of the county of Alameda in the sum of $17,108.11; for county taxes of the county of Butte in the sum of $13,490.58; for county taxes of the county of Fresno in the sum of $23,780.36; for county taxes of the county of Merced in the sum of $11.017.31; for county taxes of the county of Nevada in the sum of $14,493.60; for county taxes of the county of Placer in the sum of $35,486.42; for county taxes for the county of Sacramento in the sum of $9,728.42; for county taxes of the city and county of San Francisco in the sum of $1,434.69; for county taxes of the county of San Joaquin in the sum of $8,532.00; for county taxes of the county of Santa Clara in the

sum of $2,295.89; for county taxes of the county of Shasta in the sum of $15,469.68; for county taxes of the county of Sierra in the sum of $1,479.95; for county taxes of the county of Stanislaus in the sum of $3,402.27; for county taxes of the county of Sutter in
4 the sum of $2,997.90; for county taxes of the county of Tehama in the sum of $12,759.38; for county taxes of the county of Tulare in the sum of $4,359.50, and for county taxes of the county of Yuba in the sum of $9,569.04--

Together with five per cent. added to each of said several sums for non-payment of taxes, and also for interest on each of said several sums at the rate of two per cent. per month from the 31st day of December, 1883, and for costs and counsel fees as provided for by law.

Wherefore plaintiff demands judgment for said several sums, and prays that an attachment may issue in form, as prescribed in section 540 of the Code of Civil Procedure.

W. T. BAGGETT,
JAMES A. WAYMIRE,
Attorneys for Plaintiff and for the Controller.

(Endorsed:) Filed Feb'y 23, 1884. William T. Sesnon, clerk, by J. D. Ruggles, deputy clerk.

5 *Authorization from the Controller to Jas. A. Waymire and Wm. T. Baggett to Sue for Taxes of* 1883.

In the Superior Court of the State of California in and for the City and County of San Francisco.

THE PEOPLE OF THE STATE OF CALIFORNIA, Pl'ff,
vs.
THE CENTRAL PACIFIC RAILROAD COMPANY, Def't.

I hereby authorize James A. Waymire, Esq., and Wm. T. Baggett, Esq., to begin a- action in the proper court against the abovenamed defendant in the name of the People of the State of California, in accordance with law, to collect the delinquent taxes for 1883 upon the property of said defendant assessed by the State board of equalization, together with all costs, penalties, interest, and attorney's fees allowed by law. I also authorize the said attorneys to sue out attachments and to take all other steps necessary to the collection of said moneys.

Sacramento, Feb. 21st, 1884.

JOHN P. DUNN,
Controller.

6 (Endorsed:) Filed Feb'y 23, 1884. William T. Sesnon, clerk, by J. D. Ruggles, deputy clerk.

7 *Affidavit of James A. Waymire that Clerk Refused to Issue Attachment.*

In the Superior Court of the State of California in and for the City and County of San Francisco.

THE PEOPLE OF THE STATE OF CALIFORNIA
vs.
THE CENTRAL PACIEIC R. R. Co.

STATE OF CALIFORNIA,
City and County of San Francisco:

James A. Waymire, being first duly sworn, says: I am one of the attorneys in the above-entitled action. Heretofore, to wit, on the 28th day of February, 1883, I made application to Wm. T. Sesnon, county clerk, through J. D. Ruggles, deputy county clerk, to issue an attachment in said action, as required by law, and the said clerk refused to issue the same.

JAMES A. WAYMIRE.

Subscribed and sworn to before me this 28th day of February, 1884.

J. D. RUGGLES,
Deputy Clerk.

(Endorsed:) Filed Feb. 28, 1884. William T. Sesnon, clerk, by J. D. Ruggles, deputy clerk.

8 *Order to Show Cause Why Attachment Should Not Issue.*

In the Superior Court of the State of California in and for the City and County of San Francisco.

THE PEOPLE OF THE STATE OF CALIFORNIA
vs.
THE CENTRAL PACIFIC R. R. Co.

Good cause appearing therefor, it is ordered that on Friday, February 29th, 1884, at 10 o'clock a. m. of that day, or as soon thereafter as counsel can be heard, in the court-room of said court, in department No. 2, at the new City Hall, William T. Sesnon, clerk of said city and county, show cause why he should not issue a writ of attachment in said action as prayed for.

J. F. SULLIVAN, *Judge.*

(Endorsed:) Service of the within is hereby admitted this 28th day of February, 1884. William T. Sesnon, clerk, by J. D. Ruggles, dep. clerk. Filed Feb'y 28, 1884. William T. Sesnon, —, by J. D. Ruggles, deputy clerk.

9 *Affidavit of J. E. Foulds.*

In the Superior Court of the City and County of San Francisco, State of California.

THE PEOPLE OF THE STATE OF CALIFORNIA, Pl'ff,
vs.
THE CENRAL PACIFIC RAILROAD COMPANY, Def 't.

STATE OF CALIFORNIA, }
City and County of San Francisco, } *ss:*

J. E. Foulds, being first duly sworn, on oath says that he is one of the permanently retained attorneys of the said defendant; that there has been no extension of time to answer the complaint in said action granted either by order or stipulation; that the time to answer expires on the 7th day of March, 1884, and that said defendant cannot within said time obtain the facts necessary to its defense; that in order to present said defense it will be necessary to make examination of records in Sacramento and other counties in the State, and such examination cannot be concluded before the 25th day of March, 1884, as affiant is informed and believes.

10 Wherefore said defendant prays for an order of said court extending its time to answer, demurrer, or plead in said action to the 25th day of March, 1884.

J. E. FOULDS.

Subscribed and sworn to before me this 3rd day of March, 1884.
J. D. RUGGLES,
Deputy County Clerk.

(Endorsed:) Filed March 3d, 1884. William T. Sesnon, clerk, by J. D. Ruggles, deputy clerk.

11 *Order of Court.*

In the Superior Court, City and County of San Francisco, State of California. In open court. March 4th, A. D. 1884.

THE PEOPLE OF THE STATE OF CALIFORNIA
vs.
THE CENTRAL PACIFIC RAILROAD COMPANY. } No. 11834.

In this action the order to show cause why a writ of attachment should not issue as demanded by plaintiff having been heretofore submitted, *and* the court, being now fully advised in the premises, orders that the clerk of this court issue said writ of attachment as prayed for.

12 *Order Extending Time to Answer.*

In the Superior Court, City and County of San Francisco, State of California.

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,
vs.
THE CENTRAL PACIFIC RAILROAD CO., Defendant.

Good cause being shown the time to answer, demur, or plead in the above-entitled action is hereby extended to and including the 25th day of March, 1884.

San Francisco, March 3rd, 1884.

J. F. SULLIVAN, *Judge.*

(Endorsed :) Service of copy of within order is admitted this 4th day of March, 1884. W. T. Baggett. Jas. A. Waymire, att'y for pl'ff. Filed March 4, 1884. William T. Sesnon, clerk, by Wm. J. Rightmire, deputy clerk.

13 *Answer.*

In the Superior Court of the City and County of San Francisco, State of California.

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,
vs.
THE CENTRAL PACIFIC RAILROAD COMPANY, Defendant.

Now comes the defendant and, answering the complaint of plaintiff filed herein—

I.

Denies each and every allegation in said complaint had, made, or contained; denies that it now is or ever has been a corporation organized or existing under the laws of the State of California, or that it now is or ever has been the owner or operator of a railroad in the counties of Alameda, Butte, Fresno, Merced, Nevada, Placer, Sacramento, San Joaquin, Santa Clara, Shasta, Sierra, Stanislaus, Sutter, Tehama, Tulare, or Yuba, or in the city and
14 county of San Francisco, in said State, except as hereinafter specifically set out; denies that on the 18th day of August, 1883, or at any other time the State board of equalization assessed the franchise, roadway, road-bed, rails, or rolling-stock of defendant at the sum of $18,000,000, or any other sum of money; denies that the said board ever apportioned said pretended or any assessment to the county of Alameda in the sum of $2,496,363.00, or any other sum; to the county of Butte, in the sum of $1.345,023.00, or any other sum; to the county of Fresno in the sum of $1,825,047.00, or any other sum; to the county of Merced in the sum of $1,098,436.00, or any other sum; to the county of Nevada in the sum of $904,155.00, or any other sum; to the county of Placer in the sum of $3,370,031.00, or any other sum; to the county of Sacramento in the sum of $1,225,466.00, or any other sum; to the city and

county of San Francisco in the sum of $119,558.00, or any other sum; to the county of San Joaquin in the sum of $1,696,224.00, or any other sum; to the county of Santa Clara in the sum of $254,060.00, or any other sum; to the county of Shasta in the sum of $561,921.00, or any other sum; to the county of Sierra in the sum of $64,262.00, or any other sum; to the county of Stanislaus in the sum of $676,397.00, or any other sum; to the county of Sutter in the sum of $298,894.00, or any other sum; to the county of Tehama in the sum of $1,211,717.00, or any other sum; to the county of Tulare in the sum of $378,101.00, or any other sum; to the county of Yuba in the sum of $474,345.00, or any other sum; denies that it is indebted to plaintiff for State or county or any taxes for the year 1883 or for any other year in any sum or sums whatever; denies that it is indebted to plaintiff for State or any taxes in the sum of $89,460, or any other sum; or for county taxes for the county of Alameda in the sum of $17,108.11, or any other sum; or for county taxes for the county of Butte in the sum of $13,490.58, or any other sum; or for county taxes for the county of Fresno in the sum of $23,780.36, or any other sum; or for county taxes for the county of Merced in the sum of $11,017.31, or any other sum; or for county taxes for the county of Nevada in the sum of $14,493.60, or any other sum; or for county taxes for the county of Placer in the sum of $35,486.42, or any other sum; or for county taxes for the county of Sacramento in the sum of $9,728.42, or any other sum; or for county taxes for the city and county of San Francisco in the sum of $1,434.69, or any other sum; or for county taxes for the county of San Joaquin in the sum of $8,532.00, or any other sum; or for county taxes for the county of Santa Clara in the sum of $2,295.89, or any other sum; or for county taxes for the county of Shasta in the sum of $15,469.68, or any other sum; or for county taxes for the county of Sierra in the sum of $1,479.95, or any other sum; or for county taxes for the county of Stanislaus in the sum of $3,402.27, or any other sum; or for county taxes for the county of Sutter in the sum of $2,997.90, or any other sum; or for county taxes for the county of Tehama in the sum of $12,759.38, or any other sum; or for county taxes for the county of Tulare in the sum of $4,359.50, or any other sum; or for county taxes for the county of Yuba in the sum of $9,569.04, or any other sum.

Denies that it is indebted to plaintiff in the sum of five or any per cent. added to each or any of said several sums for non-payment of said alleged or any taxes; denies that it is indebted to plaintiff for interest on each or any of said several sums at the rate of two or any per cent. per month from the 31st day of December, 1883, or from any other time or day, or for costs or counsel fees, as provided by law, or at all. Defendant refers to and makes part of this subdivision the matter stated in subdivisions 2 to 36 of this answer.

And for further and separate answer defendant avers as follows:

II.

18 Defendant a corporation—Its place of business—Line of road—Stockholders.

The defendant is a corporation existing under the laws of the United States and of the State of California (as will hereafter more fully appear), and as such has been for many years past and still is (except in the respect hereinafter stated) the owner of a line of railroad known as the Central Pacific railroad, extending from the Pacific Ocean across the State of California and the State of Nevada to Ogden, in the Territory of Utah. The principal place of business of defendant now is, and for many years last past has been, in the city of San Francisco, State of California. Some of its stockholders and members now are, and ever have been, citizens of the United States resident in said State of California, and some of its stockholders and members now are, and ever have been, citizens of the United States resident in States other than the State of California.

III.

Length of road in the several counties.

19 The total length of said railroad in said State of California is 602.22 miles, and the length thereof in the respective counties through which it passes is as follows: In the county of San Francisco, 4 miles; in the county of Alameda, 83.52 miles; in the county of Santa Clara, 8.50 miles; in the county of San Joaquin, 56.75 miles; in the county of Sacramento, 41 miles; in the county of Placer, 112.75 miles; in the county of Nevada, 30.25 miles; in the county of Sierra, 2.15 miles; in the county of Yuba, 15.87 miles; in the county of Sutter, 10 miles; in the county of Butte, 45 miles; in the county of Tehama, 40.54 miles; in the county of Shasta, 18.80 miles; in the county of Stanislaus, 22.63 miles; in the county of Merced, 36.75 miles; in the county of Fresno, 61.06 miles, and in the county of Tulare, 12.65 miles. The length of said road, from the city of Sacramento, through the counties of Sacramento, Placer, Nevada, and Sierra, to the eastern boundary of said State, is 186.25 miles.

IV.

20 Purpose of the formation of the C. P. R. R. Co. of California.

On the 28th day of June, 1861, a corporation was formed and organized, under the laws of the State of California, under the corporate name of the Central Pacific Railroad Company of California. Said corporation was formed for the purpose of constructing, ow-ing, and operating a line of railroad and telegraph, commencing at the city of Sacramento in said State and running thence through the counties of Sacramento, Placer, Sierra, and Nevada to the eastern boundary of said State, in the expec[ta]tion that its proposed railroad would when constructed constitute part of a line of railroad extending from the Missouri river to the Pacific Ocean, which line was

then supposed was about to be constructed under the legislative supervision and authority of the Government of the United States, and which line of railroad was afterwards so constructed.

V.

Act of Congress of July 1st, 1862—Pacific railroad act.

On or about the 1st day of July, 1862, the Government of
21 the United States undertook to construct, or to cause to be constructed, a line of railroad from the Missouri river to the Pacific Ocean, and to that end Congress passed an act entitled "An act to aid in the construction of a railroad from the Missouri river to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes." To said act defendant here refers by title, and makes it a part of this answer. (See United States Statutes, vol. 12, page 489.)

By said act certain persons therein named were made and erected into a corporation under the name and style of the "Union Pacific Railroad Company," and said corporation was authorized and empowered to construct, own, and operate a line of railroad and telegraph from the Missouri river to the Pacific Ocean.

VII.

Like privileges and immunities granted to defendant.

To facilitate the construction of said road the Government of the United States, by said act of Congress, adopted the said Central Pacific Railroad Company of California as the instrument
22 or agent of the United States and conferred upon it the same powers and clothed it with the same privileges and immunities which it conferred upon and clothed the said Union Pacific Railroad Company with, except that the said Central Pacific Railroad Company of California was to commence the construction of said railroad at the Pacific Ocean and build east until it met the said Union Pacific railroad building west.

VII.

Act of Congress of July 2d, 1864—Amendment.

On or about the 2d day of July, 1864, Congress passed an act entitled "An act to amend an act entitled an Act to aid in the construction of a railroad and telegraph line from the Missouri river to the Pacific Ocean, and to secure to the Government of the United States the use of the same for postal, military, and other purposes," approved July 1, 1852. To said act defendant here refers by title and makes the same a part of this answer. (See 13 United States Statutes at Large, page 356.)

23 VIII.

Intent of Congress in passing acts of 1861 and 1864.

The intent and purposes of Congress in passing said acts was to

secure the completion of a railroad from the Missouri river to the Pacific Ocean, and to secure the use thereof for all time to come to the Government of the United States for the transportation of its mails, troops, munitions of war, and public stores.

IX.

C. P. R. R. Co. accepts terms offered by Congress.

Said Central Pacific Railroad Company of California filed in the Department of the Interior its acceptance of the terms and conditions of said act of Congress of July 1st, 1861, within the time therein designated.

X.

Transfer of rights to W. P. R. R. Co.

On or about the 31st day of October, 1864, said Central Pacific Railroad Company of California sold and assigned all its rights under the aforesaid acts to a corporation then existing under the laws of the State of California and known as the Western
24 Pacific Railroad Company, so far as said rights related to the construction of said railroad and telegraph between the cities of San José and Sacramento, in said State of California. Said assignment was ratified and confirmed by the United States by an act of Congress passed on the 3d day of March, 1865, entitled "An act to amend an act entitled An act to aid in the construction of a railroad and telegraph line from the Missouri river to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes, approved July 1st, 1862, and to amend an act amendatory thereof, approved July 2d, 1864." To said act defendant here refers by title and makes the same a part of this answer. (See 13 United States Statutes a- Large, page 504.)

XI.

Railroad completed.

The said line of railroad from the Pacific Ocean to Ogden, in Utah Territory, was completed and put in operation in 1869, and has been in operation from that time until the present and still is in operation, and the whole of the railroad mentioned in the said acts
25 of Congress have long since been completed, and is now, in accordance with the spirit and intent of said acts of Congress, operated as one continuous line from the Missouri river to the Pacific Ocean, and is so operated and maintained for the uses and purposes mentioned in said acts, and the corporations in charge thereof, including this defendant, are agents of the Federal Government charged to carry out the purposes of said Government as expressed in said acts of Congress.

XII.

Consolidation.

In August, 1870, acting under the said acts of Congress, said Cen-

tral Pacific Railroad Company of California and the said Western Pacific Company formed themselves into one corporation under the name of the Central Pacific Railroad Company. Said company is the defendant herein, and, as the agent and instrument of the Federal Government, has, from the completion of said railroad as aforesaid until the present time, owned (except in the respect hereafter stated) and operated said railroad under and by virtue of said
26 acts of Congress and for the uses and purposes therein mentioned.

XIII.

Indebtedness secured by mortgage.

The bonds loaned by the United States under said acts of Congress of July 1st, 1862, and July 2d, 1864, to said Central Pacific Railroad Company of California were about twenty-seven millions of dollars. No part of said loan, except the accruing interest thereon, has been paid, but the same now is, and for more than five years last past has been, outstanding; to secure the payment of the same the United States now have, and ever since the issue of said bonds have had, a lien by mortgage upon the said railroad, its rolling-stock, fixtures, and franchises. By said act of Congress of July 2d, 1864, said Central Pacific Railroad Company of California was authorized to issue its bonds in an amount equal to said United States bonds and to secure the payment of the same by a mortgage upon its said road, telegraph, franchises, and properties. Under the provisions of said act said bonds to the amount of more
27 than five thousand dollars per mile were issued before the first day of January, 1875, and the payment of the same was secured by a mortgage made by said company upon its said railroads, rolling-stock, and franchises. Said bonds are unpaid and outstanding, but are not yet due, and the same now are, and ever since their issue have been, secured by the mortgage aforesaid. Many of said bonds now are, and ever have been, owned by citizens and *bona fide* residents of the State of California, while other of said bonds now are, and ever have been, owned by citizens of the United States, *bona fide* residents of States other than California.

XIV.

Land mortgage.

To further aid in the construction of its railroad hereinbefore described the defendant, on the first day of October, A. D. 1870, made, executed, and delivered a mortgage covering all its said lands acquired under the acts of Congress aforesaid in the sum of ten million of dollars. Said mortgage was duly acknowledged and
28 filed for record in the office of the county recorder of the several counties in which said land is situated, a copy of which is hereto annexed, marked "Exhibit A," and made a part hereof. To secure the payment of said mortgage the defendant issued bonds in the amount of ten million of dollars. A part of

said bonds have been redeemed, but there still remains due and unpaid $5,749.000, which is a valid and subsisting lien upon all of said lands. Said unpaid bonds now are, and ever have been, owned and held by citizens and *bona fide* residents of the State of California; and some of said bonds now are, and ever have been, owned by citizens of the United States *bona fide* residents of States other than the State of California.

The lands covered by said land-mortgage are situate in the States of California and Nevada and the Territory of Utah. The aggregate amount of said lands in the State of California is 652,125 acres.

Said lands are situated in the following counties in the quan-
29 tity herein set out, as follows: In Sacramento county, 350 acres; in Placer county, 21,621 acres; in Nevada county, 30,595 acres; in Sierra county, 9,655 acres; in Yuba county, 40,664 acres; in Sutter county, 3,008 acres; in Butte county, 159,272 acres; in Tehama county, 217,499 acres; in Shasta county, 114,606 acres; in Colusa county, 27,650 acres; in El Dorado county, 21,314 acres; in Plumas county, 5,704 acres; in Yolo county, 212.26 acres.

XV.

Mortgaged lands—Mode and manner of assessment—Payment of taxes.

The lands mentioned in the preceding subdivision are not, and never have been, in any way connected with the railroad business of the defendant. They are agricultural and grazing lands, held, owned, and used for farming and grazing purposes.

Said lands and all of them for each of the years 1880, 1881, 1882, and 1883 were assessed by the assessors of the respective counties in which they are situated at their full cash value, and no deduction from said value was made or allowed on account of said
30 mortgage or the indebtedness secured thereby. On the contrary, the laws of the State of California under which said assessors acted in making said assessments prohibited any deduction from said value on account either of the mortgages or the indebtedness secured thereby.

In each of said years the defendant paid in full, at the time the same became payable, all the taxes levied upon said lands, amounting, in the aggregate, for State, county, and municipal purposes, to over $120,000.00.

The laws of the State of California, then and ever since in force, provide that in the assessment and valuation of lands of like character and situation and in every respect similar, both in quality and use, not owned by railroad or other quasi-public corporations, a mortgage thereon, by which a debt is secured, shall, for the purposes of assessment and taxation, be deemed and treated as an interest in the property affected thereby; and that in the assessment and valuation of such property, for the purposes of taxation, the value of said mortgages shall be deducted therefrom and the owner
31 of said lands or property only assessed and taxed for the value in excess of the value of the mortgage.

To assist the assessor in the performance of his duties and to enable him to make the deductions aforesaid, the laws of the State of California make it the duty of the recorder of each county, annually, on or before the first Monday in April, to transmit to the assessor a complete abstract of all mortgages, by which any debt is secured, remaining unsatisfied on the records of his office at 12 o'clock meridian on the first Monday of March of said year; and it is further provided by said laws that should any such list be found to contain any instrument relating to lands situated in more than one county it shall be the duty of the assessor to transmit to the State board of equalization all information relating thereto; and it shall be the duty of the State board to attach an apportionment of valuation of such instrument to be assessed in each county, and to transmit to the assessor of each county mentioned as affected in said instrument
a statement of valuation of assessment to be levied against
32 said instrument in such county. (Political Code, sect. 3678.)

In the matter of the valuation of said lands for the purposes of taxation the defendant is and ever has been deprived of all the benefits of the said laws which provide for the deduction of indebtedness secured by mortgage from the valuation of lands by reason of the provisions of section 4 of article XIII of the constitution of the State of California, and the action of assessors in pursuance thereof, while all natural persons and all corporations not quasi-public within the State of California are entitled to receive, and do receive, the full benefit of said laws and the deductions required to be made thereunder.

XVI.

Property belonging to the U. S. exempt from taxation.

That under said constitution all property belonging to the United States is exempt from taxation.

XVII.

Assessment by State board of equalization.

33 On the 18th day of August, 1883, the State board of equalization of the State of California, pretending to act under and by virtue of the powers conferred upon it by section 10 of article XIII of the constitution of the State of California, did make a pretended assessment for the purposes of taxation for the fiscal year of said State then next ensuing upon the franchise, roadway, road-bed, rails, and rolling-stock of said railsoad against defendant. Said pretended assessment was not made separately upon the franchise, roadway, road-bed, rails, and rolling-stock, or any properties of said railroad, but all of said property was blended together in making said assessment, which assessment was then and there so entered upon the minutes of said board. Said assessment is the assessment upon which the several taxes mentioned in the complaint herein are based, and no other assessment than the aforesaid was ever made of said property or any part thereof for

said fiscal year. Said assessment included all property and kinds of property mentioned in section 3665 of the Political Code of California, as amended March 9th, 1883, except depots, station-,
34 shops, and buildings erected upon the space covered by the right of way, which last-mentioned property was assessed, as provided in said section, by local assessor.

XVIII.

State board pretended to assess the whole of said property to defendant.

The State board of equalization in making the said pretended assessment pretended to assess to and against defendant the full cash value of said railroad, roadway, road-bed, rails, rolling-stock, and franchises, as prescribed in said section 3665, without deducting therefrom the value of the mortgage or any part thereof given and existing thereon as aforesaid to secure the indebtedness of said company to the holders of said bonds, notwithstanding, as defendant avers, they had full knowledge of the existence of such mortgage.

XIX.

State board did not treat said mortgage as an interest in the property.

In making said pretended assessment the said State board of equalization did not deem or treat said mortgages as an interest in said property, but did assess the whole value of said property
35 to the defendant in the same manner it would have done had there been no mortgages thereon.

XX.

Authority exercised by State board violates provisions of Fourteenth Amendment.

Under the constitution of the State of California the board of supervisors of the several counties of the State constitute boards of equalization for their respective counties, whose duty it is to equalize the valuation of the taxable property in the county, except the franchise, roadway, road-bed, rails, and rolling-stock of railroads operated in more than one county of the State, and to such boards the owners of all property, except as above stated, have the right and privilege to apply for the correction of their assessments, and have the right and privilege of a hearing before the said local boards of equalization. By the provisions of the constitution of California and the laws in pursuance thereof this right and privilege, or any right or privilege, to be heard in relation to assessments is denied to defendant in respect to the property in question; all of which
36 defendant avers is contrary to the provision of the Fourteenth Amendment to the Constitution of the United States which declares that no State shall deny to any person within its jurisdiction the equal protection of the laws.

XXI.

Further violation of the Fourteenth Amendment.

The power conferred upon the State board of equalization by section ten of article XIII of the constitution of California violates the provision of the Fourteenth Amendment to the Constitution of the United States which declares that no State shall deprive any person of life, liberty, or property without due process of law, for that said section, as to such power, is self-executing and complete, and does not provide for personal or other notice to be given to the parties to be affected by the exercise of such power, and does not provide for a full or any opportunity of time, place, or tribunal for such parties to be heard in defense of their rights, and, hence, under and by said provision of the constitution of the State of California the
37 liability of owners of such property to taxation and the amount thereof may be fixed without notice to them or an opportunity to be heard.

XXII.

Further discrimination.

The provisions of section four of the constitution of the State of California, providing for the assessment of the property of railroad and other quasi-public corporations, is in contravention of the provisions of said Fourteenth Amendment of the Constitution of the United States in that it discriminates against such corporations in this: that whereas, under said section four of said article XIII of the constitution of the State of California, if the property of natural persons or corporations not quasi-public has a mortgage, lien, or incumbrance thereon they are not liable to assessment or taxation upon such property, but only upon the value of their interest in such property over and above the value of such mortgage, lien, or incumbrance, whereas in the case of the property of railroad and other quasi-public corporations no such allowance or deduction is
38 made, had, or allowed with respect to any mortgage, lien, or incumbrance there may be upon such property, and also in this: that while the tenth section of article XIII of the constitution of the State of Calfornia provides the same mode for the assessment of the franchises, roadway, road-bed, rails, and rolling-stock of all railroads operated in more than one county, whether such property be owned by railroad or other quasi-public corporations or by private corporations or by natural persons, yet section four of article XIII of said constitution permits or allows indebtedness secured by mortgage, trust deed, or otherwise to be deducted from the value of such property only when it is owned by natural persons or corporations not quasi-public, and denies such deduction when the property is owned by railroad or other quasi-public corporations.

XXIII.

Section 10 of article XIII of said constitution of California provides that all property except the franchise, roadway, road-bed, rails,

and rolling-stock of all railroads operated in more than one county in the State shall be assessed in the county, city, city and county,
39 town, township, or district in which it is situated in the manner prescribed by law.

The laws of said State prescribe that all property, except that above mentioned, shall be assessed in the county in which it is situated by an assessor elected by the people of such county.

The assessors of the several counties in the State of California have, as the defendant is informed and believes, and so avers, in each year since the adoption of said constitution, assessed all moneys, credits, bonds and stocks, dues, franchises, and all other matters and things, real, personal, and mixed, capable of private ownership, situated in their said counties, and all dues and credits held, owned, or in the possession of persons resident in said county, to such persons.

Said assessors for each of said years have assessed to the owners and holders thereof, in their respective counties, the indebtedness of the defendant secured by the mortgage herein mentioned, but never have, nor does the law permit them so to do, made any de-
40 duction from the assessment of any of the property of this defendant on account of the assessments made as aforesaid to the holders of such indebtedness.

XXIV.

Further discrimination.

All owners of railroad property operated in more than one county, by virtue of said section ten of article XIII, are denied any protection from the laws of the State of California, which—

(*a*) Require that property shall be taxed in proportion to its value.

(*b*) Require such proportions to be ascertained by a general law.

(*c*) Require that before liability be fixed an opportunity to be heard must be given.

(*d*) Give an appeal from the assessor to boards of equalization.

(*e*) Require the assessment to be made in the county, and prohibit its being made in localities distant from the *situs* of the property.

(*f*) Which prescribe mode and manner of the assessment.

And defendant avers that at and before and ever since the adoption of the constitution of California now in force there were and are existing under the laws of said State corpora-
41 tions of various kinds formed for the purpose of and actually operating and doing business and holding and using and operating property in more than one county in said State, and that at all of said times there were and there now are divers natural persons, residents of said State, operating property in more than one county in said State, and that at all of said times there were and now are railroads owned by corporations formed under the general laws of said State, and also by natural persons, which are only operated in one country; that by the provisions of section ten of article XIII of said State constitution persons operating railroads in more than one county in the State have been singled out from all other persons operating property in more than one county and denied the right,

common to all other persons, to appeal for relief from overvaluations of their property by assessors to the local board of equalization, and denied the rights and privileges accorded by the laws to all other persons in that respect.

Corporations in said State of California now are, and ever have been, formed under general laws relating thereto, and rail-
42 road and all other corporations, except public corporations formed or organized for the government of a portion of the State, now are, and ever have been, designated by the laws of California as private corporations. Under the provisions of the laws relating to the formation of private corporations such corporations may be formed for any purpose for which individuals or natural persons may lawfully associate themselves together, and there now exists in California, and ever have existed, corporations formed under said laws for fire, marine, mutual life, health, and accident insurance; building, constructing, and operating railroads, wagon-roads, *wagon-roads*, telegraphs, bridges, ferries, wharves, chutes, and piers, and for constructing and operating canals, for the purposes of acquiring lands in large tracts and distributing them as homesteads among the corporators, for savings and loans, for mining, for the sale and distribution of water in cities and towns; for manufacturing, mechanical, and agricultural purposes; for benevolent, charitable, and educational purposes; for cemeteries, agricultural fairs, and various other purposes.

43 In said State of California there now are, and for more than three years last past have been, various railroads owned, operated, and controlled either by individuals, partnerships, or by private corporations other than railroad corporations, to wit, by mining and manufacturing corporations. There now is, and for more than three years last past has been, a railroad in use and operation extending from the city of Marysville, in the county of Yuba, to the town of Oroville, in the county of Butte, in said State, a distance of twenty-seven miles, which said road now is and ever has been operated in more than one county in this State and is of the same gauge as the road of this defendant and has ever been operated for like uses and purposes.

Said road, with all its equipments, now is, and for more than three years last past has been, in the ownership and under the operation and control of one N. D. Rideout, a citizen of the United States and resident of the State of California.

There now is, and for more than three years last past has
44 been, a railroad extending from the town of Santa Cruz, on the Pacific Ocean, and in the county of Santa Cruz eastward through said county and into the county of Monterey to the town of Pajaro, a distance of about twenty-one miles.

Said road now is, and for a long time past has been, owned, operated, and used for like purposes for which the defendant's road is owned, operated, and used, and that the same now is, and for a long time past has been, in the ownership and operated by the Pacific Improvement Company, a private corporation formed under the

laws of the State of California, which said corporation is not, and never has been, a railroad or quasi-public corporation.

There now are, and for more than five years last past have been, divers other railroads owned and operated in said State by corporations other than railroad corporations and by individuals and partnerships, and that all of said corporations, individuals, and partnerships are the owners of lands which are assessed by the local assessors of the various counties in which such lands are situated, and all are entitled under the laws of said State to the deduc-
45 tions provided for in said laws, and, as said defendant, upon information and belief, avers, have been allowed such deductions.

XXV.

System adopted by said board violates rules of equality.

The State board of equalization, in making said pretended assessment of the said roadway of defendant, did willfully and designedly include in the valuation of said roadway the value of fences erected upon the land of coterminous proprietors, and did willfully and designedly value the said roadway at a greater value than the value of other property similarly situated, and greater than its actual value, upon the ground that such increased valuation should be made because the title of defendant thereto was acquired by condemnation.

The value of such fences, which were not the property of defendant nor the property of the owners of said roadway, and the increased value affixed to the roadway by the system adopted by the board are blended in said pretended assessment, and there is no mode
46 or means by which such illegal valuation can be separated from those which may be legal.

Defendant, upon its information and belief, avers that the said State board of equalization adopted a system of valuation in respect to all the property mentioned and referred to in section 10 of article XIII of the constitution, which defines the power of said board, which system was by said board intended to and which did operate unequally, and which was intended to and did violate the rule prescribed by said section—that all of such property should be assessed at its actual value. The system so adopted was applied by the said board in making said pretended assessment of said property and in making the assessment of all property in the State over which the pretended authority of said board extended.

XXV (*a*).

Value of ferry-boats blended with other values.

The western terminus of the said railroad of defendant is in the city of San Francisco, on the west side of the Bay of San
47 Francisco. The distance across said bay is five miles, and the whole thereof is part of the navigable waters of said bay. The cars of the company are transported from the end of the railroad track of said road on the eastern side of said bay to the end of the

common to all other persons, to appeal for relief from overvaluations of their property by assessors to the local board of equalization, and denied the rights and privileges accorded by the laws to all other persons in that respect.

Corporations in said State of California now are, and ever have been, formed under general laws relating thereto, and rail-
42 road and all other corporations, except public corporations formed or organized for the government of a portion of the State, now are, and ever have been, designated by the laws of California as private corporations. Under the provisions of the laws relating to the formation of private corporations such corporations may be formed for any purpose for which individuals or natural persons may lawfully associate themselves together, and there now exists in California, and ever have existed, corporations formed under said laws for fire, marine, mutual life, health, and accident insurance; building, constructing, and operating railroads, wagon-roads, *wagon-roads*, telegraphs, bridges, ferries, wharves, chutes, and piers, and for constructing and operating canals, for the purposes of acquiring lands in large tracts and distributing them as homesteads among the corporators, for savings and loans, for mining, for the sale and distribution of water in cities and towns; for manufacturing, mechanical, and agricultural purposes; for benevolent, charitable, and educational purposes; for cemeteries, agricultural fairs, and various other purposes.

43 In said State of California there now are, and for more than three years last past have been, various railroads owned, operated, and controlled either by individuals, partnerships, or by private corporations other than railroad corporations, to wit, by mining and manufacturing corporations. There now is, and for more than three years last past has been, a railroad in use and operation extending from the city of Marysville, in the county of Yuba, to the town of Oroville, in the county of Butte, in said State, a distance of twenty-seven miles, which said road now is and ever has been operated in more than one county in this State and is of the same gauge as the road of this defendant and has ever been operated for like uses and purposes.

Said road, with all its equipments, now is, and for more than three years last past has been, in the ownership and under the operation and control of one N. D. Rideout, a citizen of the United States and resident of the State of California.

There now is, and for more than three years last past has
44 been, a railroad extending from the town of Santa Cruz, on the Pacific Ocean, and in the county of Santa Cruz eastward through said county and into the county of Monterey to the town of Pajaro, a distance of about twenty-one miles.

Said road now is, and for a long time past has been, owned, operated, and used for like purposes for which the defendant's road is owned, operated, and used, and that the same now is, and for a long time past has been, in the ownership and operated by the Pacific Improvement Company, a private corporation formed under the

laws of the State of California, which said corporation is not, and never has been, a railroad or quasi-public corporation.

There now are, and for more than five years last past have been, divers other railroads owned and operated in said State by corporations other than railroad corporations and by individuals and partnerships, and that all of said corporations, individuals, and partnerships are the owners of lands which are assessed by the local assessors of the various counties in which such lands are situated, and all are entitled under the laws of said State to the deduc-
45 tions provided for in said laws, and, as said defendant, upon information and belief, avers, have been allowed such deductions.

XXV.

System adopted by said board violates rules of equality.

The State board of equalization, in making said pretended assessment of the said roadway of defendant, did willfully and designedly include in the valuation of said roadway the value of fences erected upon the land of coterminous proprietors, and did willfully and designedly value the said roadway at a greater value than the value of other property similarly situated, and greater than its actual value, upon the ground that such increased valuation should be made because the title of defendant thereto was acquired by condemnation.

The value of such fences, which were not the property of defendant nor the property of the owners of said roadway, and the increased value affixed to the roadway by the system adopted by the board are blended in said pretended assessment, and there is no mode
46 or means by which such illegal valuation can be separated from those which may be legal.

Defendant, upon its information and belief, avers that the said State board of equalization adopted a system of valuation in respect to all the property mentioned and referred to in section 10 of article XIII of the constitution, which defines the power of said board, which system was by said board intended to and which did operate unequally, and which was intended to and did violate the rule prescribed by said section—that all of such property should be assessed at its actual value. The system so adopted was applied by the said board in making said pretended assessment of said property and in making the assessment of all property in the State over which the pretended authority of said board extended.

XXV (*a*).

Value of ferry-boats blended with other values.

The western terminus of the said railroad of defendant is in the city of San Francisco, on the west side of the Bay of San
47 Francisco. The distance across said bay is five miles, and the whole thereof is part of the navigable waters of said bay. The cars of the company are transported from the end of the railroad track of said road on the eastern side of said bay to the end of the

railroad track on the western side of said bay on steam ferry-boats belonging to the defendant, built, owned, and constructed for that purpose, and are of great value. For more than four years past the defendant has been the owner of two steam ferry-boats, one of the tonnage of 1,566 tons and one of the tonnage of 1,012 tons, and during the whole of that time has used said boats for the purposes aforesaid. Said boats now are, and for more than four years last past have been, of a class which are by law required to be registered, and now are, and for more than four years last past have been, duly registered and enrolled in the city and county of San Francisco, State of California.

The State board of equalization, in making said pretended assessment of the said roadway, road-bed, rails, and rolling-stock of
48 defendant, did willfully and designedly include in the valuation thereof the value of said boats, and the value of said boat is blended in said pretended assessment with the value of said roadway, rails, road-bed, rails, and rolling-stock, and there is no means by which such value can be separated from the valuation placed by said board upon said roadway, road-bed, rails, and rolling-stock, or either of them.

Said system was to include within the value of the roadway the value of the fences owned and possessed by coterminous proprietors, and to value said roadway at double its actual value, because the right thereto was acquired by condemnation. Said system relative to the rolling-stock of railroads was to value the same at sixty per cent. above its actual cost when new, and to value such rolling-stock at double its actual value. Said system relative to the franchise was to value it at $2,000 per mile, when the actual value, as the board well knew, of said franchise as an entirety did not ex-
49 ceed twenty-five dollars Said system as to the valuation of other property to be assessed by the said board was to value it at double its actual value. Said system was by the said board adopted and was by it applied in making all assessments made by it, with the intent and purpose wrongfully and unlawfully to cause the owners of property assessed by it to pay double the rate of State and county taxes paid by the owners of property assessed by local assessors; and defendant avers, upon its information and belief, that the said board applied the said system in making the pretended assessment against the property upon which the taxes mentioned in the complaint are based; and defendant, upon its information and belief, avers that the said State board of equalization in making said pretended assessment did not value any of said property at its actual value, but did, intentionally and for the purpose of making defendant pay an unequal proportion of State and county taxes, assess the said property at double its actual value; and de-
50 fendant avers that the general rule in this State has been to assess property at not over two-thirds its cash or actual value, and that this rule was adopted and acted upon by all local assessors in the State and by the said State board, except in the exercise of the power conferred by section 10, art. XIII, of the State constitution for said fiscal year, and that all property, save that assessed by the

said State board under said section, has been valued and assessed at one-third less than its actual value, and that the taxes have been collected on valuations so made.

XXVI.

Defendant's franchise a Federal one.

And defendant, upon its information and belief, avers that under and by virtue of the said several acts of Congress defendant became, and ever since has been, a Federal corporation, and has held its franchise and exercised all its corporate powers under the Government of the United States.

XXVII.

Corporate powers in part derived from acts of Congress.

51 And defendant, upon its information and belief, avers that if, by virtue of the several acts of Congress herein referred to, it did not become a Federal corporation, yet it holds under the Government of the United States all the corporate powers and franchises granted to it by the said several acts of Congress as the trustee of the said Government and for the governmental uses and purposes specified in said acts.

XXVIII.

That the franchise of defendant is not subject to State taxation.

Under and by virtue of the said several acts of Congress hereinbefore referred to the defendant was, by the Government of the United States, selected as the means and instrument of that Government to construct the railroad hereinbefore described, and to keep and maintain the same in repair, to the end that the said Government might, when occasion required, use the same for the transportation of its armies and military stores, and for such other purposes as said Government might, in the execution of its
52 powers, desire to use the same. The Government of the United States has never given to the State of California the right to lay any tax upon the franchise, existence, or operations of defendant. Such a tax would hinder and impede the lawful operations of the Government of the United States, would hinder, delay, and prevent the defendant from performing, as aforesaid, its obligations to the United States, and would nullify and prevent the enforcement of the said several acts of Congress.

XXIX.

Whole franchise assessed.

Said pretended assessment made by the State board of equalization is upon all of the franchises of defendant, and the said board, in valuing the same, included the value of all the franchises and corporate powers held and exercised by defendant under said acts of Congress.

XXX.

Tax upon the franchise blended with tax upon other property.

53 The State board of equalization in making said pretended assessment included and assessed the franchise of defendant, and in making said pretended apportionment included in the valuation affixed to the property of defendant the value thereof, but such value is not separately stated in said apportionment, nor upon any assessment-roll or delinquent list of said county, but such value is in said pretended apportionment and upon the assessment-roll and delinquent list of said county blended with the value affixed to the roadway, road-bed, etc., and cannot on either be distinguished or separated from such other values, and the tax upon said franchise is in like manner blended with and cannot be separated from the tax on said roadway, road-bed, etc.

XXXI.

Valuation excessive.

Neither the franchise, roadway, road-bed, rails, or rolling-stock were assessed by the State board of equalization in said pretended assessment at their actual value, or in proportion to their value, but were willfully and intentionally assessed greatly in excess and out
54 of proportion to such value, and greatly in excess of and out of proportion to the rate at which all other property in said State is valued for the purposes of taxation, to wit, one hundred per cent. in excess thereof.

XXXII.

Sole authority upon which tax is based.

Said pretended assessment is the only assessment of said property, and the pretended tax for non-payment of which this action is brought is founded upon said pretended assessment and upon no other assessment.

XXXIII.

State tax void.

The defendant, upon its information and belief, avers that the State board of equalization never at any time did for the said fiscal year fix or determine any rate of taxation for State purposes, and that the sum and the whole thereof claimed in the complaint for State taxes for said fiscal year is illegal and void.

XXXIV.

Plaintiff's causes of action based upon assessment by State board of equalization.

55 On the 18th day of August, 1883, the State board of equalization of the State of California, pretending to act under and by virtue of the powers conferred upon it by section ten of

article XIII of the constitution of the State of California, did make a pretended assessment for the purposes of taxation for the fiscal year of said State then next ensuing upon the franchise, roadway, road-bed, rails, and rolling-stock of the railroad hereinbefore described, and known as the Central Pacific railroad, against this defendant; that said pretended assessment was not made separately upon the franchise, roadway, road-bed, rails, and rolling-stock of said railroad, but all of said property was blended together in making said assessment, which assessment was then and there so entered upon the minutes of said board. Said pretended assessment is the assessment upon which the several taxes mentioned in plaintiff's complaint are claimed to be due, and that no other assessment than such pretended assessment was ever made against or upon said property or any part thereof.

XXXV.

Tender.

On the ninth day of November, 1883, the defendant, while
56 then and now denying all liability upon said pretended assessment, and claiming that all of the proceedings had in relation thereto were in violation of law and the rights of this defendant, tendered and offered the said plaintiff the sum of $166,119.10, in United States gold coin, in part payment of the tax claimed, with an agreement that the receipt of said sum should not prejudice the plaintiff in any legal rights; and defendant now brings said sum into court and offers the same to plaintiff, and, if refused by plaintiff, subjects the said sum to such orders or judgments as the court may make in the premises; and defendant avers that of the sum so tendered it tendered specifically for the benefit of the State and on the amount claimed by the State the sum of $53,676.00, and on account of the various county taxes claimed it tendered sums as follows, to wit:

For the county of Alameda the sum of $10,264.86.
For the county of Butte the sum of $8,094.36.
For the county of Fresno the sum of $14,268.21.
For the county of Merced the sum of $6,610.39.
For the county of Nevada the sum of $8,696.25.
For the county of Placer the sum of $21,291.86.
57 For the county of Sacramento the sum of $5,837.01.
For the county of San Francisco the sum of $860.82.
For the county of San Joaquin the sum of $5,119.20.
For the county of Santa Clara the sum of $1,377.51.
For the county of Shasta the sum of $9,281.80.
For the county of Sierra the sum of $887.97.
For the county of Stanislaus the sum of $2,041.36.
For the county of Sutter the sum of $1,798.74.
For the county of Tehama the sum of $7,655.63.
For the county of Tulare the sum of $2,615.70.
For the county of Yuba the sum of $5,741.43.
And ever since has and now keeps said tender good.

XXXVI.

No rules or regulations.

Said State board of equalization has never at any time made or adopted any rule or regulation relative to the assessment or valuation of railway property of any kind, nor has it ever made or adopted any rule to govern or regulate its proceedings in the exercise of the powers conferred upon it by section 10 of article XIII of the constitution of California.

Wherefore defendant prays it be hence dismissed with costs.

J. E. FOULDS,
Attorney for Defendant.

S. W. SANDERSON AND
CREED HAYMOND,
Of Counsel.

58 *Verification.*

STATE OF CALIFORNIA, }
City and County of San Francisco, } *ss:*

E. H. Miller, Jr., being first duly sworn, on oath says that he is an officer, to wit, the secretary of the corporation defendant herein; that he has read the foregoing answer and knows the contents thereof; that the same is true of his own knowledge except as to those matters therein stated on his own information or belief, and as to those he believes it to be true.

E. H. MILLER, JR.

Subscribed and sworn to before me this 14th day of March, A. D. 1884.

[NOTARIAL SEAL.] CHARLES J. TORBERT,
Notary Public in and for the City and County of San Francisco, State of California.

59 EXHIBIT "A."

This indenture, made this the first day of October, A. D. 1870, between the Central Pacific Railroad Company, a railroad corporation duly incorporated and organized under and pursuant to the laws of the State of California, party of the first part, and Charles Crocker and Silas W. Sanderson, both of the city of Sacramento and State of California, parties of the second part, witnesseth:

That whereas by an act of the Congress of the United States of America, approved on the first day of July, 1862, entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri river to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," and an act amendatory thereof, approved on the second day of July, 1864, there was granted to the Central Pacific Railroad Company of California, a railroad corporation then being duly incorporated and organized under and pursuant to the laws of the State of California, a

large body of the public lands of the United States, to wit:
60 Every alternate section of public land, designated by odd numbers, to the amount of ten alternate sections per mile on each side of the railroad and telegraph line of said company running from Sacramento, in the State of California, to their junction with the railroad and telegraph line of the Union Pacific Railroad Company at or near Ogden, in Utah Territory, a distance of seven hundred and forty miles not sold, reserved, or otherwise disposed of by the United States, and to which no pre-emption or homestead claim had attached at the time the line of said railroad was definitely fixed, and not containing minerals other than coal and iron, for the purpose of aiding in the construction of said railroad and telegraph line, and to secure the safe and speedy transportation of the mails, troops, munitions of war, and public stores of the United States;

And whereas by an act of Congress of the United States of America, approved on the twenty-fifth day of July, 1866, entitled "An act granting lands to aid in the construction of a railroad and
61 telegraph line from the Central Pacific railroad, in California, to Portland, in Oregon," there was granted to the California and Oregon Railroad Company, a railroad corporation then duly incorporated and organized under and pursuant to the laws of the State of California, a large body of the public lands of the United States, to wit: Every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile (ten on each side) of the railroad and telegraph line of said company, running from a point on the line of the Central Pacific railroad, at or near Roseville, in the county of Placer and State of California, to the northern boundary of said State, a distance of two hundred and forty-six miles, for the purpose of aiding in the construction of said railroad and telegraph line, and to secure the safe and speedy transportation of the mails, troops, munitions of war, and public stores of the United States, with a further provision to the effect that when any of said alternate sections shall appear to have been previously granted, sold, reserved, occupied by
62 homestead settlers, pre-empted, or otherwise disposed of, other lands, designated as aforesaid, may be selected by said company in lieu thereof, under the direction of the Secretary of the Interior, in alternate sections, designated by odd numbers as aforesaid, nearest to and not more than ten miles beyond the limits of said first alternate sections;

And whereas, heretofore, to wit, on the twenty-second day of June, A. D. 1870, the said Central Pacific Railroad Company of California, pursuant to a statute of the State of California in such cases made and provided, was consolidated with the Western Pacific Railroad Company, a railroad corporation then duly incorporated and organized under the laws of the State of California, and ow-ing and operating a railroad and telegraph line from the city of Sacramento to the cities of Oakland and San José, in the State of California, a distance of one hundred and fifty miles, into a new corporation under the corporate name and style of the Central Pacific Railroad Company;

And whereas, heretofore, to wit, on the twentieth day of
63 August, A. D. 1870, the said last-named corporation, the said California and Oregon Railroad Company, the San Francisco, Oakland and Alameda Railroad Company, a railroad corporation then existing, duly incorporated and organized under the laws of said State, and owning and operating a railroad running from San Francisco through the city of Oakland to Hayward's, in Alameda county, a distance of twenty-five miles, and the San Joaquin Valley Railroad Company, a railroad corporation duly incorporated and organized under the laws of said State, and then existing by virtue thereof, owning a line of railroad and telegraph running from a point on the road of the said Central Pacific Railroad Company at Lathrop, in the county of San Joaquin, to the town of Visalia, in the county of Tulare, in said State, a distance of one hundred and fifty-two miles, said railroad and telegraph being then only partially constructed, did, pursuant to a statute of said State in such case made and provided, amalgamate and consolidate themselves into a new corporation under the corporate name of the "Central Pacific
64 Railroad Company," which last-named corporation is the said party of the first part to this indenture;

And whereas, by force and effect of said consolidation, the said party of the first part has succeeded to the title to all of said lands, and now owns and holds the same;

And whereas the said party of the first part desires to raise money for the purpose of completing the construction and equipment of said railroad and telegraph line from the town of Roseville aforesaid to the northern boundary of the State of California, and also for the purpose of completing the construction and equipment of said railroad and telegraph line from the town of Lathrop aforesaid to the town of Visalia aforesaid, and also for the payment of the debts and liabilities of said party of the first part, and to that end has, by its board of directors, considered and determined to issue the bonds of said company, in the sum of one thousand dollars each, to the number of ten thousand, payable to the said parties of the second part, or to the holder thereof, twenty years from date, with interest at the rate of six per cent. per annum, payable
65 semi-annually on the first days of April and October of each year ensuing its date, payable, both principal and interest, in United States gold coin, in the city of New York; and to secure the payment of said bonds did further consider and determine to mortgage the lands hereinbefore described, except so much thereof as is or shall be included in the rights of way of the railroads and telegraph lines of said company as defined and granted by the acts of Congress aforesaid, or is being or shall be used in the construction or operation thereof, or for the track, yards, depot grounds, buildings, or erections thereof, to the said parties of the second part in trust for the holders of said bond-;

And whereas it is further considered and determined that said bonds, and each of them, should bear date on the first day of October, A. D. 1870, and should have attached thereto forty interest coupons, numbered from one to forty, inclusive, in the following form :

$——. Central Pacific Railroad Company. No. ——.

For Land Bond No. ——.

Interest coupon for thirty dollars, due ——— 1st, 18—.

Payable in the city of New York.

———— ————, *Secretary.*

66 And whereas it is further considered and determined that said bonds, and each of them, should be of the following tenor and form:

No. ——. $1,000.

Land Bond

of the

Central Pacific Railroad Company.

The Central Pacific Railroad Company acknowledges itself indebted to Charles Crocker and Silas W. Sanderson, both of the city of Sacramento and State of California, or to the holder hereof, in the sum of one thousand dollars, gold coin of the United States, which sum it promises to pay to the holder hereof, in the city of New York, twenty years from the date hereof, with interest thereon at the rate of six per cent. per annum, payable semi-annually on the first days of April and October of each year ensuing the date hereof, both principal and interest payable in United States gold coin.

This bond is one of ten thousand, each of which is for the same sum of money and of like tenor, and all of which are secured by a mortgage to Charles Crocker and Silas W. Sanderson,
67 as trustees for the holders thereof, on all the lands granted by the United States to the Central Pacific Railroad Company of California by an act of Congress approved on the first day of July, 1862, entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri river to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes, and an act amendatory thereof approved on the second day of July, 1864; also, all the lands granted to the California and Oregon Railroad Company by an act of Congress approved on the twenty-fifth day of July, 1866, entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific railroad, in California, to Portland, in Oregon" (which lands are now owned by the said Central Pacific Railroad Company by force and effect of a consolidation between said companies pursuant to a statute of the State of California in such case made and provided), save and except so much of said lands as are or shall be included in the right of way for the
68 railroad and telegraph lines of the said Central Pacific Railroad Company, or is being or shall be used in the construc-

tion or operation thereof, or for track, yards, depot grounds, buildings, or other erections thereof; and also so much thereof as may have been sold previous to the date of said mortgage, to wit, the first day of October, 1870.

In testimony whereof said company has caused its corporate seal to be hereunto affixed by its president and secretary on this the first day of October, A. D. 1870:

Now, therefore, this indenture witnesseth that that the said party of the first part, for the purpose of securing the payment of the sums of money mentioned in said bonds and the interest thereon, and in consideration of the premises, and also for and in consideration of the sum of one dollar to the said party of the first part in hand paid by the parties of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, released, enfeoffed, conveyed, and confirmed, and by these presents does grant,
bargain, sell, release, enfeoff, convey, and confirm, unto the
69 said parties of the second part, as trustees, and to their successors and survivor-, and their assigns forever—

All and singular the said several sections of land so as aforesaid granted by said acts of Congress, and also all the estate, right, title, interest, claim, and demand whatsoever, at law or in equity, of, in, or to the same, or any part or parcel thereof, which the said party of the first part now has, holds, owns, or is entitled to, or hereafter may or shall acquire, have, hold, own, or be or become entitled to by force or virtue of the said acts of Congress, saving, excepting, and reserving all parts and parcels of said lands as have been sold heretofore, or which are, or shall be, included in the rights of way of the said railroad and telegraph lines of said company, as defined and granted by the acts of Congress aforesaid, or used for the construction or operation thereof, or for the tract, yards, depot grounds, buildings, or erections thereof.

To have and to hold all and singular the lands hereby granted
or intended to be granted, and each and every part and par-
70 thereof, with the appurtenances thereunto belonging, unto the said parties of the second part, and their successors and survivor and their assigns, forever, as trustees, for the uses and purposes and upon the trusts, terms, conditions, and agreements in this indenture set forth and declared:

Provided always, and these presents are upon the express condition, that if the said party of the first part shall well and truly pay, or cause to be paid, to the holders of said bonds, and every of them, the principal sums of money therein mentioned, according to the tenor thereof, with the interest thereon, at the times and in the manner hereinbefore provided, according to the true intent and meaning of these presents, then and from thenceforth this indenture and the estate hereby granted shall cease and determine, and all the right, title, and interest in any and all property hereby conveyed to the parties of the second part, not then disposed of under the powers hereby conferred, shall revert to and vest in the said party of the first part.

This indenture further witnesseth, that these presents and

71 the said bonds are made, executed, and delivered upon the trusts, terms, conditions, and agreement following—that is to say:

That all the lands hereinabove conveyed and mortgaged shall be under the sole and exclusive management and control of the said party of the first part, who shall have full power and authority to make contracts for the sale of the same at such price, on such credit or terms of payment, and such other conditions as shall be agreed on by the said parties of the first and second part, and as shall seem to them best calculated to secure the payment in full of all the bonds issued as hereinbefore provided, until entry or foreclosure by the trustees, as hereinafter provided; but no title to any tract of land contracted to be sold by the said party of the first part shall be given until the whole of the purchase-money of said tract shall be paid to said parties of the second part or their successors or survivor in cash or in said bonds or overdue coupons thereof; and for this purpose it is agreed that the said party of the first

72 part and said trustees shall cause all such lands as they shall from time to time become subject to sale to be carefully examined and surveyed, and shall affix to each tract or parcel such price as in their judgment shall be most judicious, having in view the interests of all parties; and said lands shall be and remain at all times thereafter open for sale to any person who may desire to purchase and pay therefor, the prices being, nevertheless, at all times, subject to revision and alteration by the said parties; and the party of the first part may reserve from sale any lands necessary for depot grounds or other purposes connected with the construction or operation of the said railroad or telegraph. The purchaser of any such land shall be at liberty to pay for the same in the aforesaid bonds or overdue coupons at par; and when any parcel or tract of said lands shall have been purchased and paid for, either in bonds, coupons, or cash, as hereinbefore provided, the same shall be conveyed by the said parties of the first and second part- to the purchaser

73 in fee-simple, and shall by such conveyance be absolutely and forever released from any and all lien or incumbrance for or on account of said bonds or any other debt or obligation of the said party of the first part. The said trustees shall and will cancel and discharge each and every bond and the coupons thereon, and all overdue coupons which they may receive in payment for land or by purchase, by defacing the seal of the corporation, perforating the signatures of the president and secretary, and drawing lines across each of the interest coupons on receipt thereof, and all bonds and coupons received in payment for lands as aforesaid, shall, when so cancelled, be delivered to the said party of the first part.

The said trustees shall apply the proceeds of the sales made by them of lands hereby conveyed to the sole and exclusive purpose of the payment of the bonds provided for in and issued in conformity to the terms of this indenture, and for this purpose all such avails shall, from time to time, as the same are realized, be used in the purchase of such bonds in the market, to be cancelled, so

74 long as purchases thereof can be made at par, and whenever such bonds cannot be purchased at that rate said trustees

shall advertise for proposals to sell such bonds to them in two newspapers published in the city of New York and one newspaper published in each of the cities of San Francisco and Sacramento, and after receiving such proposals they shall have power to purchase such bonds at the lowest terms so offered. The said party of the first part doth hereby covenant and agree to pay to the holders of said bonds, respectively, the said principal sums of money therein mentioned and the interest thereof as aforesaid. If any default shall be made in the payment, either of principal or interest, on any of said bonds for six months after demand at the place of payment, when the same shall become due, then the said trustees may, on being requested by the holders of at least one hundred thousand dollars of such bonds, enter into and take possession of any of the lands above conveyed and foreclose this mortgage, and may
75 sell at public auction so much of said lands as may be necessary to discharge all arrears of such interest and apply the proceeds, after deducting the costs, charges, and expenses of such entry, foreclosure, and sale, to the payment of such arrears of interest. If any such default shall continue for one year from the time of such demand and refusal the principal sum of all said bonds then outstanding shall become due and payable, and the said trustees may enter into and take possession of all the lands above by these presents mortgaged or conveyed, foreclose this mortgage, and sell at public auction all said lands or so much thereof as may be necessary, first giving at least six months' previous notice of the time and place of sale in at least one newspaper published in the city of New York and in one published in each of the cities of San Francisco, Sacramento, Virginia, and Salt Lake, and they shall apply the proceeds thereof, after deducting the costs, charges, and expenses of such last-mentioned entry, foreclosure, and sale, to the payment of all
76 said bonds then outstanding and the interest accrued thereon, rendering the overplus, if any there shall be, unto the said party of the first part. In case of any sale upon any such foreclosure or at any such public auction the said trustees shall make, execute, and deliver a conveyance of the said lands so sold, which shall convey to the purchasers all the rights and privileges of the said party of the first part in and to the property so sold to the same extent as the same shall have been previously enjoyed and held by the said party of the first part. If after any such entry shall be made or any such foreclosure proceeding shall be commenced for the satisfying of interest only, as above provided, and before the lands are sold thereon, the said party of the first part shall pay and discharge such interest and deliver the coupons therefor to the said trustees, and pay all the costs, charges, and expenses incurred in such entry and foreclosure and the proceedings thereon, then and in every such case the said trustees shall discontinue their
77 proceedings thereon and restore to the said party of the first part all such lands to be held subject to the above conveyance and mortgage, and subject to all the provisions, terms, and conditions of these presents in like manner as if such entry had not been made nor such foreclosure proceedings commenced.

In case a vacancy shall happen in the number of trustees hereinbefore mentioned as parties of the second part in this indenture, or if one of them shall be temporarily absent, the remaining trustee shall, while said vacancy or absence exists, have all the rights, exercise all the powers, and discharge all the duties devolving on the said trustees by this instrument. But, as soon as it conveniently may be done, such vacancy shall be filled by the nomination by the remaining trustee of some proper person to fill such vacancy, which nomination shall be submitted to the board of directors of said company, and, if approved by them, the person so nominated and approved immediately shall become a trustee under this instrument.
78 If said nomination is not approved another person shall be nominated by said remaining trustee, and in like manner submitted for approval, and so on till three nominations shall have been made. But if three successive nominations shall be made, and none of them shall be approved by said board, said vacancy shall be filled by a committee of three persons selected, one by said remaining trustee, one by said board of directors, and a third by the two thus selected, and the person appointed trustee by a majority of the committee shall be and remain a trustee under this instrument. And the person regularly appointed a trustee to fill a vacancy in either of the firms above specified shall, from and after his said appointment and his acceptance of the appointment, become vested with the same estate, powers, rights, and interests and charged with the same duties and responsibilities as if he had been one of the original trustee-, parties of the second part, named in and executing this instrument; and the prior remaining trustee may and shall execute such conveyances and instruments as may be proper or necessary to vest the same in such new trustee jointly with
79 him or to furnish evidence of such vesting. If at any time either of the said trustees shall resign his place as trustee by a proper deed or writing to that effect, and such resignation shall be accepted by the said party of the first part, then and in every such case the place of such resigning trustee thereupon shall become and be vacant. Whenever all the bonds which shall have been made and issued by the said party of the first part under and in conformity to the provisions of this indenture, with the interest thereon, together with all the expenses incurred by the said trustees in the execution of the trust herein and hereby created, shall have been fully paid, the said trustees shall reconvey to the said party of the first part all and singular the said lands then in the hands of the said trustee, and not before that time sold or disposed of in the execution of the trust hereby created. In case the said trustees shall at any time have any trust moneys on hand, derived from the sale of the lands hereby conveyed, which will not be required to meet any immediate liabilities of the company to which said
80 moneys are by these presents devoted, the said moneys shall be deposited on interest with some bank or trust company in the city of San Francisco or Sacramento, subject to be drawn by checks signed by the trustees or such one of them as they may designate. All the books of the said company and of the trustees relating

to the lands hereby conveyed shall be mutually open to the inspection of said company and said trustees. It shall be the duty of said trustees to certify and deliver to the said party of the first part the said bonds as the same from time to time shall be demanded, issued or used by the said party of the first part.

And it is hereby mutually agreed by and between the parties hereto that the said parties of the second part and their survivor and successors, and their heirs, executors, and administrators, shall not be answerable for the acts, omissions, or defaults of each other, nor for anything short of their own gross negligence or willful misfeasance.

It is hereby declared by the parties to this indenture that all the provisions of said acts of Congress, so far as
81 they are applicable, are hereby made, and shall be deemed and taken to be, a part of this instrument; and the said provisions, in all that concerns the sale and disposal of the said lands hereby conveyed to the parties of the second part, are to be observed and strictly and faithfully carried out and fulfilled. And the said party of the first part covenants and agrees to and with the said parties of the second part that the said party of the first part shall and will at any and all times hereafter, and from time to time, execute, acknowledge, and deliver, under its corporate seal, to the said parties of the second part, and their survivor or successors, all such other or further assurances, deeds, mortgages, obligations, transfers, indentures, and instruments in writing, and shall and will do and perform all such other or further acts or thing as shall or may be necessary or proper, or as their counsel learned in the law shall deem necessary, proper, or expedient for the better or more effectually securing upon the above conveyed and mortgaged prem-
82 ises the payment of the said bonds so to be issued, and the interest due and to grow due thereon in manner aforesaid, or for carrying into effect the true intent, design, objects, and purposes of these presents.

In witness whereof the said party of the first part has caused these presents to be signed with its corporate name and sealed with its corporate seal, by its president and secretary, the day and year first above written.

[Seal Central Pacific Railroad Company.]

LELAND STANFORD,
President C. P. R. R. Co.
E. H. MILLER, JR.,
Secretary C. P. R. R. Co.

We accept the trust declared in the foregoing instrument.

CHARLES CROCKER. [SEAL.]
SILAS W. SANDERSON. [SEAL.]

(Endorsed:) Due service of the within answer admitted this 22nd day of March, 1884. James A. Waymire. Wm. T. Baggett, attorney for plaintiff. Filed March 22nd, 1884, at 2¼ p. m. William T. Sesnon, clerk, by J. D. Ruggles, deputy clerk.

83 *Petition.*

In the Supreme Court, City and County of San Francisco, State of California. Dep't 2.

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,
vs.
THE CENTRAL PACIFIC RAILROAD COMPANY, Defendant. } No. 11834.

To the honorable the superior court in and for the city and county of San Francisco, State of California:

Your petitioner, The Central Pacific Railroad Company, respectfully shows:

That your petitioner is the sole defendant in the above-entitled action now pending in this honorable court.

That said action was brought on the 23rd day of February, 1884, the complaint therein having been duly filed on said date.

That the defendant has on this day, and before the filing of this petition, appeared in said action and filed an answer to the complaint of plaintiff.

84 That no term of this court has been held since this action, and this petition is filed before the term at which the cause could be first tried.

That no trial of said action has been had, and this petition is filed before the trial thereof.

That said action is a suit of a civil nature at law, and arising under the Constitution and laws of the United States, and that the matter in dispute exceeds, exclusive of costs, the sum and value of five hundred dollars.

That said action is brought by the plaintiff to recover from the defendant on account of taxes claimed by the plaintiff to be due and payable from the defendant for State and county purposes, as will more fully appear by a reference to the plaintiff's complaint on file herein.

That the assessment described in the complaint and answer, and which the plaintiff in this action claims to be due and payable, is an assessment which the State board of equalization of the State of California pretended to make under and by virtue of the authority conferred upon the board by section 10 of

85 article XIII of the State constitution.

That the defendant claims in this action that said provisions of the constitution of the State of California and the authority thereby conferred upon said State board of equalization violate the provisions of the Fourteenth Amendment to the Constitution of the United States in this: that its effect is to deprive the defendant of its property without due process of law, and that under it the defendant is denied any protection from the general laws of the State of California which—

First. Require that property shall be taxed in proportion of its value.

Second. Require such proportions to be ascertained by a general law.

Third. Require, before the liability is fixed, that the right to be heard must be given.

Fourth. Which give an appeal from the assessor to another tribunal.

Fifth. Require the assessment to be made in the county and prevent its being made in localities distant from the *situs* of the property.

86 Sixth. Prescribe the mode and manner of the assessment; and,

Seventh. Which allow deductions from indebtedness secured by mortgage.

Eighth. Which require property to be assessed at its actual value.

That in the assessment and apportionment described and mentioned in the answer the franchise of the defendant and the whole thereof is included in the valuation and so blended with the other assessments and valuations that it cannot be distinguished therefrom; and defendant claims in this action that under and by virtue of the acts of Congress of July 1st, 1862, and July 2d, 1864 (which acts are referred to in said answer), the defendant was, by the Government of the United States, selected as as an instrument and means of that Government to carry into execution the said several acts of Congress; and defendant further claims in this action that under and by virtue of said several acts of Congress the State has no power to impose a tax upon the franchise or operations of defendant, and that such tax violates the provisions of said several acts of Congress.

87 That prior to the 1st day of January, 1884, the defendant was and now is indebted to divers persons, citizens of the United States, and many of them then and now citizens and *bona fide* residents of the State of California, and others of them then and now citizens and *bona fide* residents of other States of the Union, in large sums, for moneys advanced to construct and equip its railroad described in the answer herein; that to secure the payment of such indebtedness the defendant, long prior to the said day, executed and delivered a mortgage upon its railroad and all rolling-stock and appurtenances, and upon a large number of tracts of land situated in different counties of the State of California, which said tracts of land then were and ever since have been the property of defendant; that said indebtedness exceeded and still exceeds three thousand dollars per mile of said road; that no part thereof has ever been paid, except the accruing interest, and that the whole thereof is now, and since the execution of said mortgage has been, a valid and subsisting indebtedness against said company defendant, and

88 has been and still is secured by said mortgage.

That the said pretended assessment made as aforesaid by said State board of equalization included the whole value of said property without any deduction therefrom; that under the constitution of the State of California, when property other than property such as is described in the complaint is assessed and valued for the purposes of taxation, it is the duty of the assessor making such valuation to deduct from the value of such property all indebtedness secured by

mortgage or lien upon the property; that the supreme court of the State of California, the highest tribunal in said State, has decided that defendant (and others similarly situated) is not entitled to the protection of the Fourteenth Amendment of the Constitution of the United States, — is not a means or instrument of the Federal Government; that its franchise is assessable and subject to taxation without the consent of the Federal Government, and that defendant and others similarly situated are not entitled to the reduction hereinbefore referred to; that said decision of the supreme court of the State of California is in full force and is binding upon the inferior courts of the State, and especially upon this court; that the facts stated in the answer herein are true, which answer defendant refers to and makes part of this petition; that defendant is the corporation mentioned in the said several acts of Congress hereinbefore referred to, and that the railroad of defendant which has been assessed by the State board of equalization is the road constructed, operated, and maintained by defendant under the said several acts of Congress; that the plaintiff in said action will rely upon the decision of the supreme court of the State of California, and that the construction of said several acts of Congress and of the Fourteenth Amendment to the Constitution of the United States is in this action disputed, and must necessarily be adjudged and determined herein, and that if said adjudication and determination be in favor of defendant and against that heretofore made by the supreme court of the State of California such adjudication and determination will be conclusive in favor of defendant upon the merits of this action; that this is a suit arising under the Constitution and laws of the United States; that your petitioner has made and filed with this petition a bond in the penal sum of five thousand dollars, with good and sufficient surety, conditioned that your petitioner shall enter in the circuit court of the United States to be held in the district of California, in the ninth circuit, on the first day of its next session, a copy of the record in said suit, and shall pay all costs that may be awarded by the said circuit court if said court shall hold that said suit was wrongfully or improperly removed thereto, and also shall appear in said circuit court and enter special bail in said suit if special bail was originally requisite therein, and shall do all such other and further appropriate acts as, by the act of Congress approved March 3, 1875, entitled "An act to determine the jurisdiction of circuit courts of the United States and to regulate the removal of causes from State courts, and for other purposes," are requisite to be done upon removal of a suit in a circuit court of the United States from a State court; and your petitioner is ready and willing to give such other and further bonds and to do all such other acts as may be lawfully required.

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Your petitioner therefore prays that this honorable court will accept this petition and said bond and proceed no further in said suit, and that said suit may be removed into the circuit court of the United States in and for the district of California, in the

ninth circuit, as required by statute of the United States in such cases made and provided.

And your petitioner will ever pray, etc.

J. E. FOULDS,
Attorney for Petitioner.

S. W. SANDERSON,
CREED HAYMOND,
Of Counsel.

92 (Endorsed:) Filed March 22d, 1884, 2¼ o'c. p. m. William T. Sesnon, clerk, by J. D. Ruggles, deputy.

93 *Bond.*

In the Superior Court, City and County of San Francisco, State of California. Dep't 2.

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,
vs.
THE CENTRAL PACIFIC RAILROAD COMPANY (a Corporation), Defendant. } No. 11834.

Know all men by these presents that we, The Central Pacific Railroad Company, as principal, and Chas. F. Crocker and A. N. Towne, as sureties, are held and firmly bound unto The People of the State of California in the sum of five thousand dollars, to be paid to the said plaintiff; for which payment, well and truly to be made, we bind ourselves, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these present.

Sealed with our seals and dated this fifth (5th) day of March, 1884.

Whereas the above-entitled action was brought, on or about the 23rd day of February, 1884, in the superior court in the county of San
94 Francisco, State of California, and the same is now pending in said superior court, by said The People of the State of California against said Central Pacific Railroad Company, and is removable into the circuit court of the United States in and for the district of California, in the ninth circuit, under and by that certain act of Congress of the United States, approved March 3, 1875, entitled "An act to determine the jurisdiction of circuit courts of the United States and to regulate the removal of causes from State courts, and for other purposes;"

And whereas said The Central Pacific Railroad Company has made, and is about to file herewith, its petition in said suit in said superior court in and for the county of San Francisco, State of California, for the removal of said suit into said circuit court of the United States, to be held in the said district of California, in the ninth circuit:

Now, the condition of this obligation is such that if said The Central Pacific Railroad Company shall enter in such circuit court of
95 the United States, on the first day of its next session, a copy of the record in said suit, and shall pay all costs that may be awarded by the said circuit court if said court shall hold that such suit

was wrongfully or improperly removed thereto, and also shall there appear and enter special bail in such suit if special bail was originally requisite therein, and shall do all such other appropriate acts as by the said act of Congress are required to be done upon the removal of a suit from a State court into the circuit court of the United States, then this obligation to be void; otherwise to remain in full force and virtue.

[SEAL.] THE CENTRAL PACIFIC RAILROAD COMPANY,
By E. H. MILLER, JR., *Secretary.*
CHAS. F. CROCKER. [SEAL.]
A. N. TOWNE. [SEAL.]

STATE OF CALIFORNIA, }
City and County of San Francisco, } *ss:*

Chas. F. Crocker and A. N. Towne, the sureties in the foregoing obligation, being each sworn, each of himself says that he is a
96 resident of the State of California and a freeholder therein, and is worth the sum of five thousand dollars over and above all his just debts and liabilities, exclusive of property exempt by law from execution.

CHAS. F. CROCKER.
A. N. TOWNE.

Subscribed and sworn to before me this fifth (5th) day of March, 1884.

[NOTARIAL SEAL.] CHARLES J. TORBERT,
Notary Public in and for the City and County of San Francisco, State of California.

I hereby approve of the above sureties and accept and approve the foregoing bond.
Dated ——, 1884.

—— ——,
Judge Superior Court, City and County of San Francisco.

(Endorsed:) Filed March 22d, 1884, 2½ o'c. p. m. Wm. T. Sesnon, clerk, by J. D. Ruggles, deputy.

97 *Clerk's Certificate.*

I, William T. Sesnon, county clerk of the county of San Francisco, State of California, and *ex-officio* clerk of the superior court court of said county, do hereby certify the foregoing to be a full, true and correct copy of the whole of the record in the within action of The People of the State of California *vs.* The Central Pacific Railroad Company, now on file in my office and numbered 11834.

In witness whereof I have hereunto set my hand and affixed the seal of the said superior court this 22d day of March, 1884.

[SEAL.] WILLIAM T. SESNON,
County Clerk and ex-Officio Clerk of Superior Court,
By J. D. RUGGLES,
Deputy Clerk.

(Endorsed:) Filed April 24, 1884. L. S. B. Sawyer, clerk.

98 *Affidavit of Service.*

In the Circuit Court of the United States, 9th Circuit, District of California.

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

vs.

THE CENTRAL PACIFIC RAILROAD COMPANY, Defendant.

STATE OF CALIFORNIA, }
City & County of San Francisco, } *ss:*

A. D. D'Ancona, being first duly sworn, says that he is and was, at all times hereinafter mentioned, a white male citizen of the U. S. & of the State of California, over the age of 21 years, and not interested in or a party to said action, and competent to be a witness therein; that on the 8th day of July, 1884, in said city and county, he personally served upon John E. Foulds, attorney for the def't herein, the annexed demurrer by then & there delivering to him a correct copy of the same.

A. D. D'ANCONA.

Subscribed & sworn to before me this 8th of April, 1884.
[SEAL.] EDW'D CHATTIN.
Notary Public.

99 *Demurrer to Answer.*

In the Circuit Court of the United States, Ninth Circuit, District of California.

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

vs.

THE CENTRAL PACIFIC RAILROAD CO., Defendant.

Now comes the plaintiff and demurs to the answer filed herein on the ground that the same does not state facts sufficient to constitute a defense, in this, that the defense sought to be made can only be made as provided by section 3669 of the Political Code; that the mode of procedure pointed out by said section is exclusive, and prohibits a delinquent from defending against an action brought by the State under section 3670 of the Political Code as in the above-entitled action.

JAMES A. WAYMIRE,
W. T. BAGGETT,
Attorneys for Pl'ff.

E. C. MARSHALL,
Attorney General.

100 *Stipulation Waiving Jury, &c.*

In the Circuit Court of the Ninth Judicial Circuit in and for the District of California.

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,
vs.
THE CENTRAL PACIFIC RAILROAD COMPANY, Defendant. } No. 3263.

It is hereby stipulated by and between the plaintiff and defendant in the above-entitled action that trial by jury is waived; and it is further stipulated that the above-entitled action shall be, and is hereby, submitted to the court for its findings and determination—

First. Upon the assessment-roll on file in the office of the controller of the State of California for the year 1883 and upon the assessment in said roll contained and referred to in the complaint herein, which roll is hereby given in evidence.

Second. Upon the testimony heretofore given in this court by both parties upon the trial of the cases of "The County of Sacramento *vs.* The Central Pacific Railroad Company," No. 3019;
101 and "The County of Sacramento *vs.* The Central Pacific Railroad Company," No. 3099; and "The People of the State of California *vs.* The Central Pacific Railway Company," No. 2845; which cases were determined by this court in the year 1883, and are now pending on appeal in the Supreme Court of the United States.

Third. Upon the admission by plaintiff of the facts stated in paragraph number two of the defendant's answer, except that the plaintiff does not admit that the defendant is a Federal agency or a corporation existing under the laws of the United States.

Fourth. Upon the admission made by plaintiff that the facts stated in the third, fourth, fifth, sixth, seventh, ninth, tenth, eleventh, twelfth, thirteenth, fourteenth, fifteenth, seventeenth, eighteenth, and nineteenth paragraphs of defendant's answer are true.

Sixth. Upon the admission by plaintiff that the facts stated in paragraph 22 of said answer are true, with this exception, that the defendant does not admit that the facts stated constitute any discrimination against the corporations or any of them men-
102 tioned in said paragraph.

Seventh. Upon the admission by plaintiff that the facts stated in paragraph 24 of said answer are true, except that plaintiff does not admit that by virtue of section 10 of article 13 of the constitution of the State, or any law of the State, owners of railroad property operated in more than one county in the State are denied any protection from the laws of the State of California.

Eighth. Upon testimony offered by the defendant tending to prove the averments contained in subdivisions 24 and 25 of said answer, and upon testimony offered by plaintiffs tending to disprove the averments in said paragraphs contained.

Ninth. Upon the admission of the plaintiff that the averments contained in paragraphs 29, 32, and 34 are true, except that pl'ff does not admit that any Federal franchise was assessed.

Tenth. Upon the admission of plaintiff that the tender pleaded in said answer has been kept good, and that under the order of this court made on the 29th day of September, 1884, the defendant
103 has paid to plaintiff on account of said tender, and without prejudice to either party, the sum of $166,119.10 for the uses and purposes specified in defendant's answer relative to said tender.

Eleventh. Upon the admission made by plaintiff that the averments contained in the last paragraph of defendant's answer are true.

It is hereby stipulated that the court in making its findings in this case may, in considering the testimony given in the cases referred to in this stipulation, and in considering the matters mentioned in the stipulation hereinbefore referred to in relation to time and place and all other things, adapt the same to the issues in this case, and consider all such matters as if such changes had been made before submission.

And it is further stipulated that upon the issue whether, in the assessment in this case mentioned, the distance across the Bay of San Francisco from Oakland to San Francisco, was included in the length of the Central Pacific railroad, as assessed, the at-
104 torneys for plaintiff may file in the case the sworn statement of the clerk of the State board of equalization, which state ment, if filed, shall be conclusive upon that issue, and upon the issue whether or not the value of fences were included by the board in the assessment of the property described in the complaint.

The attorney for plaintiff may at any time before the decision of the case file therein a sworn statement of the clerk of the State board of equalization, which said statement, if filed, shall be conclusive upon that issue.

Oct. 21, 1884.

J. E. FOULDS,
H. S. BROWN, &
CREED HAYMOND,
Att'ys for Pl'ff.

E. C. MARSHALL,
Att'y Gen'l and Attorney for Plaintiff.
W. T. BAGGETT,
JAMES A. WAYMIRE,
Counsel for Plaintiff.

(Endorsed:) Filed Oct'r 2, 1884. L. S. B. Sawyer, clerk.

105 *Findings.*

In the Circuit Court of the United States, Ninth Judicial Circuit, in and for the District of California.

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,
vs.
THE CENTRAL PACIFIC RAILROAD COMPANY, Defendant. } No. 3263.

The above-entitled cause having been brought on to a hearing before a court without a jury, and the parties by stipulation in

writing, filed with the clerk, having waived a jury, and the proofs introduced and given by the respective parties having been fully considered, the court makes the following finding of facts:

I.

That on the 18th day of August, 1883, the State board of equalization of the State of California, acting under the authority of section 10 of article XIII of the constitution of the State of California, and in the mode and manner prescribed by section 3665 of
106 the Political Code of California, assessed the franchise, roadway, road-bed, rails, and rolling-stock of the defendant at the sum of eighteen million dollars; that the board apportioned the said assessment as alleged in plaintiff's complaint; that thereafter and in that manner and at the times prescribed by section 3666 of the Political Code the State board of equalization prepared for that year a book called the Record of Assessments of Railways, on which book the assessment above referred to was entered and signed by the chairman and clerk; that thereafter, and in the time and manner prescribed by said section, the record of the apportionment of said assessment was made by the board to the counties and cities and counties in a separate book, called "Record of Apportionment of Railway Assessments;" that before the third Monday in October of said year the clerk of the State board of equalization prepared and transmitted to the comptroller of the State duplicates of The Record of Assessment of Railways and The Record of Apportionment of Railway Assessments, each certified by
107 the chairman and clerk of the board; that said duplicates were in manner and form as provided by said section 3666; that the entries upon said books relating to the cause of action stated in the complaint herein are as follows:

From The Record of Apportionment:

Name of the corporation, person, or association to whom heac railway is assessed, Central Pacific Railroad Company.

The name of each railway assessed by the State board of equalization, Central Pacific railroad.

Name of the county and city and county to which the assessment of each railway was apportion*ment* by the board, Alameda, Butte, Fresno, Merced, Nevado, Placer, Sacramento, San Francisco, San Joaquin, Santa Clara, Shasta, Sierra, Stanislaus, Sutter, Tehama, Tulare, and Yuba.

Number of miles of each railway operated in the State, 602.22.

Number of miles of each railway assessed by the board in each county and city and county:

Alameda	83.52
Butte	45.00
Fresno	61.06
Merced	36.75
108 Nevada	30.25
Placer	112.75

Sacramento	41.00
San Francisco	4.00
San Joaquin	56.75
Santa Clara	8.50
Shasta	18.80
Sierra	2.15
Stanislaus	22.63
Sutter	10.00
Tehama	40.54
Tulare	12.65
Yuba	15.87

Total value of each railway per mile, $29,889.40.

Total assessment of the franchise, roadway, road-bed, rails, and rolling-stock of each railway assessed for purposes of State taxation by the State board of equalization, $18,000,000.00.

The amount of the apportionment of the total assessment of the franchise, roadway, road-bed, rails, and rolling-stock of each railway to each county and city and county for county and city [and] county taxation:

Alameda	$2,496,363 00
Butte	1,345,023 00
Fresno	1,825,047 00
109 Merced	1,098,436 00
Nevada	904,155 00
Placer	3,370,031 00
Sacramento	1,225,466 00
San Francisco	119,558 00
San Joaquin	1,696,224 00
Santa Clara	254,060 00
Shasta	561,921 00
Sierra	64,262 00
Stanislaus	676,397 00
Sutter	298,894 00
Tehama	1,211,717 00
Tulare	378,101 00
Yuba	474,345 00

Rate of taxation for each county and city and county levied by board of supervisors on each $100:

Alameda	$.503
	.753
Butte	1.003
Fresno	1.303
Merced	1.003
Nevada	1.603
Placer	1.053
Sacramento	.653
	.603
San Francisco	1.20

San Joaquin		.503
Santa Clara		.633
		.953
110 Shasta		2.753
Sierra		2.303
Stanislaus		.503
Sutter		1.003
Tehama		1.053
Tulare		1.153
Yuba		1.803
		2.053

Amount of State taxes due the State upon the whole assessment by each corporation, person, or association assessed for railway—State rate of taxation on each $100, 49.7 cents—$89,460.

Amount of the county and city and county and taxes due upon the assessment apportioned to each county and city and county by each corporation, person, or association assessed for railway:

Alameda	$17,108 11
($675,799.33 at $.503 rate. $1,820,563.67 at .753 rate.)	
Butte	$13,490 58
Fresno	23,780 36
Merced	11,017 31
Nevada	14,493 60
Placer	35,486 42
Sacramento	9,728 42
111 ($74,723.50 at .653 rate. $1,150,742.50 at .803 rate.)	
San Francisco	1,434 69
San Joaquin	8,532 00
Santa Clara	2,295 89
($39,155.13 at .633 rate. $214,904.87 at .953 rate.)	
Shasta	15,469 68
Siena	1,479 95
Stanislaus	3,402 27
Sutter	2,997 90
Tehama	12,759 38
Tulare	4,359 50
Yuba	9,569 04
($67,704.00 at 1.803 rate. $406,641.00 at .2053 rate.)	

From the Record of Assessments of Railways.

The State board of equalization being in session on this the 18th day of August, 1883, all the members being present, and having under consideration the assessment of the franchise, roadway, road-bed, rails, and rolling-stock of the Central Pacific Railroad Company within the State for the year 1883, and it appearing to this board that

said company, on the first Monday in March, in the year 1883, at 12 o'clock meridian of that day, owned and still owns 602.22
112 miles of railroad within this State, which at said time and day in March was and still is operated in more than one county, being the entire railway of said company within this State, and which, with the right of way for the same, is described as follows:

San Francisco. A line of roadway, road-bed, and rails and right of way for the same, beginning at the south line of block 408 north Potrero survey; thence northerly through blocks 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 47, 45, 44, 43, to Channel street; thence northwesterly to King street; also beginning on southerly line of south beach and water lot block 20; thence northerly through blocks 20 and 15 to 4th street; thence across 4th street in a northerly direction through 100 vara lots 165 and 159 to King street, connecting with the first-described tract; thence northeasterly on King street to south beach and water lot block 9 to ferry slip of freight boats transit and thoroughfare on the bay; also short spur track from said block 9 to Pacific mail steamer's wharf; the width
113 of right of way other than public streets being sixty feet wide, and the railway being a distance of four miles in city and county of San Francisco.

Alameda. Also beginning at end of long wharf at the end of mole, West Oakland, and running thence easterly to west line of Oakland point; thence easterly to 1st street, Oakland; thence along 1st street through Oakland to west line of San Antonio estuary; thence across said estuary in a general easterly direction to its intersection with the easterly end of said local line; thence southeasterly to Melrose; thence in the same course through the towns of San Leandro, Haywards, and Decota to Niles; thence easterly and northeasterly through Alameda cañon to town of Pleasanton; thence through the town of Livermore and Livermore pass and tunnel and through Midway station to a point two hundred yards, more or less, east of said station, which is the west line of San Joaquin county; also beginning at Niles; running thence in a general south-
114 erly direction through Washington Corners and Warm Springs station to northerly line of Santa Clara county; also beginning at intersection of Harrison street and 7th street, Oakland; thence southerly along Harrison street to 1st street; thence across 1st street and the railroad bridge to south line of San Antonio estuary; thence in a southerly direction to Railroad avenue, in town of Alameda, near Mastick station; also running the full length of Railroad avenue through the town of Alameda to Melrose; also small spur track running from Alameda spur to main track, known as Fruit Vale switch, with a width of right of way other than that in a public street one hundred feet, running a distance of 83.52 miles in Alameda county.

Santa Clara. Also beginning at Southern Pacific railroad depot, in city of San José; running thence northeasterly through Milpitas to a point on southerly line of Alameda county, being a distance of eight and one-half miles in the county of Santa Clara.

115 San Joaquin. Also beginning at a point on west line of San Joaquin county two hundred yards, more or less, east of Midway station; thence easterly to Bantas; thence northeasterly to railroad bridge across San Joaquin river; thence in same course to Lathrop; thence due north, through cities of Stockton and Lodi, to railroad bridge across Calaveras river; thence northwesterly to a point in the center of bridge across Dry creek one mile, more or less, south of the town of Galt, being the north line of the county of San Joaquin, the right of way being one hundred feet wide, except public thoroughfares, thus running a distance of forty five $\frac{75}{100}$ miles in San Joaquin county.

Sacramento. Also beginning at a point in center of railroad bridge across Dry creek, south of Galt, being the south line of Sacramento county; running thence northwesterly through the town of Galt, Elk Grove, and Florence station to the intersection of Sacramento and Placerville railroad, at Bridghton station; thence continuing same course to railroad bridge across the American
116 river; thence across said bridge and in a northerly direction to a point on line between Sacramento and Placer counties, in southwest quarter of the northwest quarter of section 15, township ten north, range six east, Mount Diablo base and meridian; also spur track running from foot of "K" street, on Front street, Sacramento city, to main depot in said city; thence easterly to corner of "B" and 7th streets, in said city; thence easterly along "B" street and the levee to its intersection of main line at a point in what is known as Tivoli Gardens, with a width of right of way, except that through public thoroughfares, of one hundred feet, thus running through Sacramento county a distance of forty-one miles.

Placer. Also beginning at a point on north line of Sacramento county, where the same intersects the east line of the southwest quarter of the northwest quarter of section fifteen, township ten north, range six east, running thence in a general northeasterly direction through Roseville, Rocklin, Pino, Penryul,
117 Newcastle, Auburn, Colfax, and Dutch Flat to south line of Nevada county, where it intersects the north line of the northeast quarter of the northeast quarter of section twenty-eight, township 17 north, range 12 east; also beginning in the center of north line of northwest quarter of the northwest quarter of section thirty, township ten north, range thirteen east, to northeast corner of the southeast quarter of section twenty-six, township seventeen north, range 15 east; thence northeasterly to near the center of northeast quarter of northwest quarter of section thirty; thence northeasterly to northeast corner of northwest quarter of section twenty, township seventeen north, range sixteen east; thence to intersection of Nevada county line with center of line of southeast quarter of section seventeen, township seventeen north, range sixteen east, Mount Diablo base and meridian, with a width of right of way of two hundred feet, being a distance of ninety-two $\frac{25}{100}$ miles; also
118 beginning at the town of Roseville, near east line of section two, township 10 north, range six east; running thence north to town of Lincoln; thence continuing northwesterly through Sher-

idan to a point where the center of Bear river railroad bridge intersects the north line of Placer county, with a width of right of way for said distance of twenty and $\frac{50}{100}$ miles of one hundred feet; thus running a distance of one hundred twelve $\frac{75}{100}$ miles in Placer county.

Nevada. Also beginning at intersection of south line of Nevada county with center of south line of southeast quarter of section 21, township 17 north, range 12 east; thence in a northeasterly direction to southeast corner of southwest quarter of southwest quarter of section 19, township 17 north, range 13 east; also beginning at southeast corner of southwest quarter of section 20, township 17 north, range 14 east; thence to southeast corner of section 20, township 17 north, range 14 east; thence to southeast corner of section 20, township 17 north, range 14 east; thence to southeast corner of south-
119 west corner of southwest quarter of section 24, township 17 north, range 14 east; also beginning at southeast corner of the southwest quarter of the southeast quarter of section 17, township 17 north, range 16 east; thence northeast to intersection of south line of Sierra county with northeast corner of southeast quarter of section 7, township 18 north, range 18 east, with right of way two hundred feet wide, running a distance of thirty $\frac{25}{100}$ miles in Nevada county.

Sierra. Also beginning at a point on south line of Sierra county, a half mile, more or less, west of southeast corner of said county, running thence northeasterly to a point on east line of Sierra county, with a width of right of way of two hundred feet, a distance of two $\frac{15}{100}$ miles in county of Sierra.

San Joaquin. Also beginning at a point near depot in Lathrop, at junction with main line of Central Pacific R. R.; thence running southeasterly through Morano and Ripon to center of rail-
120 road bridge across the Stanislaus river, in township 2 south, range 8 east, with a width of right of way of one hundred feet, running a distance of eleven miles in San Joaquin county.

Stanislaus. Also beginning at a point in center of railroad bridge across Stanislaus river, in township 2 south, range 8 east, running thence southeasterly in a direct line through Soledad, Modesto, and Turlock to a point where the northwest line of Merced county intersect- the east line of the southwest quarter of section 23, township 5 south, range 10 east, with a width of right of way of one hundred feet, running a distance of twenty-two and $\frac{63}{100}$ miles in Stanislaus county.

Merced. Also beginning at a point where the southeast line of Stanislaus county intersects the east line of the southeast quarter of section 23, township 5 south, range 10 east; thence running southeast in a direct line to Cressey; thence easterly by south through Atwater to depot in town of Merced; thence continuing southeasterly to a point on northwest line of Fresno county, where
121 said line intersects the southwest corner of section 13, township 9 south, range 15 east, Mount Diablo base and meridian, width of right of way one hundred feet, running a distance of thirty-six and $\frac{75}{100}$ miles in Merced county.

Fresno. Also beginning at a point where the northwest line of Fresno county intersects section 13, township 9 south, range 15 east; thence southeasterly through Minturn, Berenda, Borden, Fresno, and Fowler's to a point on railroad bridge across King's river, southeast of and near Kingsburg on the northwest line of Tulare county, right of way one hundred feet wide, running a distance of sixty-one and $\frac{6}{100}$ miles in Fresno county.

Tulare. Also beginning at a point in center of railroad bridge across King's river, in section 36, township 16 south, range 22 east, running southeasterly to depot in Goshen, in south part of section 19, township 18 south, range 24 east, with right of way one hundred feet wide, thus running twelve $\frac{65}{100}$ miles in Tulare county.

Yuba. Also beginning at a point where the railroad bridge,
122 across Bear river intersects the center of the channel *of the channel* of said river, running thence northwesterly through the town of Wheatland across railroad bridge over Yuba river to the depot in the city of Marysville; thence northwesterly through Marysville to center of bridge across Feather river, on the south line of Sutter county, width right of way one hundred feet, except on public thoroughfares, running a distance of fifteen and $\frac{87}{100}$ miles in Yuba county.

Sutter. Also beginning at a point where the railroad bridge across Feather river intersects the center of the channel of said river, running thence in a direct line to a point near the northeast corner of section 30, township 17 north, range 3 east, on the south line of Butte county, with right of way one hundred feet wide, thus running a distance of ten miles in Sutter county.

Butte. Also beginning at a point where the north line of section 30, township 17 north, range 3 east, intersects the north line of Sutter county, running thence in a northwesterly direction through Girdley, Biggs, Durham to depot in town of Chico; thence
123 westerly to town of Nord; thence northwesterly through Anita and Cana to a point near the southwest corner of section 31, township 24 north, range 1 west, on south line of Tehama county, with width of right of way one hundred feet, running a distance of forty-five miles in Butte county.

Tehama. Also beginning at a point on north line of Butte county where the south line of the southwest quarter of the southwest quarter of section 31, township 24 north, range 1 west, intersects said point; running thence northerly by west through Vina, Tehama, and Red Bluff to a point at the southeast corner of the northeast quarter of section 16, township 28 north, range 4 west; thence northerly and northeasterly to center of channel of Cottonwood creek, which point is in southwest quarter of section 11, township 29 north, range 4 west, on south line of Shasta county, width of right of way one hundred feet, running a distance of forty and $\frac{54}{100}$ miles in Tehama county.

Shasta. Also beginning at a point in the center of Cottonwood creek near the south line of section 10, township 29 north,
124 range 4 west, running thence northeasterly to a point near the southeast corner of section 1, township 29 north, range

4 west; thence northwesterly diagonally through township 30 north, range 4 west, through the town of Anderson to a point in section 31, township 31 north, range 4 west; thence north to north line of town Redding, with width of right of way of one hundred feet, a distance of eighteen and $\frac{80}{100}$ miles in Shasta county.

And it appearing that the actual value of the franchise, roadway, road-bed, rails, and rolling-stock of said company within this State at the said date and time in March was and still is the sum of eighteen million dollars:

Therefore it is hereby ordered that the said franchise, roadway, *roadway*, road-bed, rails, and rolling-stock of the said Central Pacific railway for the year 1883 be, and the same are hereby, assessed to the said Central Pacific Railroad Company at the sum of eighteen million dollars.

C. E. WILCOXON, *Chairman.*
E. W. MASLIN, *Clerk.*

125 II.

That the defendant is a corporation existing under the laws of the State of California, except in so far as its existence, rights, privileges, duties, and obligations have been affected by various acts of Congress hereinafter referred to; that the defendant is the owner of a line of railroad known as the Central Pacific railroad, extending from the Pacific Ocean across the State of California and the State of Nevada to Ogden, in the Territory of Utah; that the principal place of business of defendant now is, and for many years past has been, in the city of San Francisco, State of California; that some of its stockholders and members now are, and ever have been, citizens of the United States, resident in the State of California, and some of its stockholders and members now are, and ever have been, citizens of the United States, resident in States other than the State of California.

III.

That the total length of said railroad in said State of California is 602 and $\frac{22}{100}$ths miles, and the length thereof in the respective counties through which it passes is as follows:

126 In the county of San Francisco, 4 miles; in the county of Alameda, 83 and $\frac{25}{100}$ths miles; in the county of Santa Clara, 8 and $\frac{50}{100}$ths miles; in the county of San Joaquin, 56 and $\frac{75}{100}$ths miles; in the county of Sacramento, 41 miles; in the county of Placer, 112 and $\frac{75}{100}$ths miles; in the ounty of Nevada, 30 and $\frac{25}{100}$ths miles; in the county of Sierra, 2 and $\frac{15}{100}$ths miles; in the county of Yuba, 15 and $\frac{87}{100}$ths miles; in the county of Sutter, 10 miles; in the county of Butte, 45 miles; in the county of Tehama, 40 and $\frac{84}{100}$ths miles; in the county of Shasta, 18 and $\frac{80}{100}$ths miles; in the county of Stanislaus, 22 and $\frac{63}{100}$ths miles; in the county of Merced, 36 and $\frac{75}{100}$ths miles; in the county of Fresno, 61 and $\frac{6}{100}$ths miles, and in the county of Tulare, 12 and $\frac{65}{100}$ths miles. The length of said road, from

the city of Sacramento, through the counties of Sacramento, Placer, Nevada, and Sierra, to the eastern boundary of said State, is 186 and $\frac{25}{100}$ths miles.

IV.

That on the 28th day of June, 1861, a corporation was
127 formed and organized, under the laws of the State of California, under the corporate name of the Central Pacific Railroad Company of California. Said corporation was formed for the purpose of constructing, owning, and operating a line of railroad and telegraph, commencing at the city of Sacramento in said State and running thence through the counties of Sacramento, Placer, Sierra, and Nevada to the eastern boundary of said State, in the expectation that its proposed railroad would when constructed constitute part of a line of railroad extending from the Missouri river to the Pacific Ocean, which line it was then supposed was about to be constructed under the legislative supervision and authority of the Government of the United States, and which line of railroad was afterwards so constructed.

V.

That on or about the 1st day of July, 1862, the Government of the United States undertook to construct, or to cause to be constructed, a line of railroad from the Missouri river to the Pacific Ocean, and to that end Congress passed an act entitled "An act to aid
128 in the construction of a railroad from the Missouri river to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes." (See United States Statutes, vol. 12, page 489.)

VI.

That to facilitate the construction of said road the Government of the United States, by said act of Congress, conferred upon the said Central Pacific Railroad Company of California the same powers and clothed it with the same privileges and immunities which it conferred upon and clothed the said Union Pacific Railroad Company, except that the said Central Pacific Railroad Company of California was to commence the construction of said railroad at the Pacific Ocean and build east until it met the said Union Pacific railroad building west.

VII.

That on or about the 2d day of July, 1864, Congress passed an act entitled "An act to amend an act entitled an Act to aid in the construction of a railroad and telegraph line from the Missouri
129 river to the Pacific Ocean, and to secure to the Government of the United States the use *for* the same for postal, military, and other purposes," approved July 1, 1862. (See 13 United States Statutes at Large, page 356.)

VIII.

That said Central Pacific Railroad Company of California filed in the Department of the Interior its acceptance of the terms and conditions of said act of Congress of July 1st, 1861, within the time therein designated.

IX.

That on or about the 31st day of October, 1864, said Central Pacific Railroad Company of California sold and assigned all its rights under the aforesaid acts to a corporation then existing under the laws of the State of California and known as the Western Pacific Railroad Company, so far as said rights related to the construction of said railroad and telegraph between the cities of San José and Sacramento, in said State of California. Said assignment was ratified and confirmed by the United States by an act of Congress
130 passed on the 3d day of March, 1885, entitled "An act to amend an act entitled An act to aid in the construction of a railroad and telegraph line from the Missouri river to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes, approved July 1st, 1862, and to amend an act amendatory thereof, approved July 2d, 1864." (See 13 United States Statutes at Large, page 504.)

X.

That the said line of railroad from the Pacific Ocean to Ogden, in Utah Territory, was completed and put in operation in 1869, and has been in operation from that time until the present and still is in operation, and the whole of the railroad mentioned in the said acts of Congress have long since been completed, and is now, in accordance with the spirit and intent of said acts of Congress, operated as one continuous line from the Missouri river to the Pacific Ocean, and is so operated and maintained for the uses and purposes mentioned in said acts.

XI.

131 That in August, 1870, acting under the said acts of Congress, said Central Pacific Railroad Company of California and the said Western Railroad Company formed themselves into one corporation under the name of the Central Pacific Railroad Company. Said company is the defendant herein, and has, from the completion of said railroad as aforesaid until the present time, owned (except in the respect hereinafter stated) and operated said railroad under and by virtue of said acts of Congress and for the uses and purposes therein mentioned.

XII.

That the bonds loaned by the United States under said acts of Congress of July 1st, 1862, and July 2d, 1864, to said Central Pacific Railroad Company of California were about twenty-seven millions of dollars. No part of said loan, except the accruing interest

thereon, has been paid, but the same now is, and for more than five years last past has been, outstanding; to secure the payment of the same the United States now have, and ever since the issue
132 of said bonds have had, a lien by virtue of the provision of said statutes of the United States upon the said railroad, its rolling-stock, fixtures, and franchises. By said act of Congress of July 2d, 1864, said Central Pacific Railroad Company of California was authorized to issue its bonds in an amount equal to said United States bonds and to secure the payment of the same by a mortgage upon its said road, telegraph, franchises, and properties. Under the provisions of said act said bonds to the amount of more than five thousand dollars per mile were issued before the first day of January, 1875, and the payment of the same was secured by a mortgage made by said company upon its said railroads, rolling-stock, and franchises. Said bonds are unpaid and outstanding, but are not yet due, and the same now are, and ever since their issue have been, secured by the mortgage aforesaid. Many of said bonds now are, and ever have been, owned by citizens and *bona fide* residents of the State of California, while other
133 of said bonds now are, and ever have been, owned by citizens of the United States, *bona fide* residents of States other than California.

XIII.

That to further aid in the construction of its railroad hereinbefore described the defendant, on the first day of October, A. D. 1870, made, executed, and delivered a mortgage covering all its said lands acquired under the acts of Congress aforesaid in the sum of ten million of dollars. Said mortgage was duly acknowledged and filed for record in the office of the county recorder of the several counties in which said land is situated, a copy of which is attached to the answer herein, marked "Exhibit A." To secure the payment of said mortgage the defendant issued bonds in the amount of ten million of dollars. A part of said bonds have been redeemed, but there still remains due and unpaid $5,749.000, which is a valid and subsisting lien upon all of said lands. Said unpaid bonds now are, and ever have been, owned and held by citizens and
134 *bona fide* residents of the State of California; and some of said bonds now are, and ever have been, owned by citizens of the United States *bona fide* residents of States other than the State of California.

The lands covered by said land mortgage are situate in the States of California and Nevada and the Territory of Utah. The aggregate amount of said lands in the State of California is 652,125 acres. Said lands are situated in the following counties in the quantity herein set out, as follows: In Sacramento county, 350 acres; in Placer county, 21,621 acres; in Nevada county, 30,595 acres; in Sierra county, 9,655 acres; in Yuba county, 40,664 acres; in Sutter county, 3,008 acres; in Butte county, 159,272 acres; in Tehama county, 217,499 acres; in Shasta county, 114,606 acres;

in Colusa county, 27,650 acres; in El Dorado county, 21,314 acres; in Plumas county, 5,704 acres; in Yolo county, 212.26ths acres.

XIV.

The lands mentioned in the preceding subdivision are not, and never have been, in any way connected with the railroad business of the defendant. They are agricultural and grazing lands, held, owned, and used for farming and grazing purposes.

Said lands and all of them for each of the years 1880, 1881, 1882, and 1883 were assessed by the assessors of the respective counties in which they are situated at their full cash value, and [no] deduction from said value was made or allowed on account of said mortgage or the indebtedness secured thereby. On the contrary, the laws of the State of California under which said assessors acted in making said assessments prohibited any deduction from said values on account either of the mortgages or the indebtedness secured thereby.

In each of said years the defendant paid in fully, at the time the same became payable, all the taxes levied upon said lands, amounting, in the aggregate, for State, county, and municipal purposes, [to] over $120,000

The laws of the State of California, then and ever since in force, provide that in the assessment and valuation of lands of like character and situation and in every respect similar, both in quality and use, not owned by railroad or other quasi-public corporations, a mortgage thereon, by which a debt is secured, shall, for the purposes of assessment and taxation, be deemed and treated as an interest in the property affected thereby, and that in the assessment and valuation of such property, for the purposes of taxation, the value of said mortgages shall be deducted therefrom and the owner of said lands or property only assessed and taxed for the value in excess of the value of the mortgage.

To assist the assessor in the performance of his duties and to enable him to make the deductions aforesaid, the laws of the State of California make it the duty of the recorder of each county, annually, on or before the first Monday in April, to transmit to the assessor a complete abstract of all mortgages, by which any debt is secured, remaining unsatisfied on the records of his office at 12 o'clock meridian on the first Monday of March of said year; and it is further provided by said laws that should any such list be found to contain any instrument relating to lands situated in more than one county it shall be the duty of the assessor to transmit to the State board of equalization all information relating thereto; and it shall be the duty of the State board to attach an apportionment of valuation of such instrument to be assessed in each county, and to transmit to the assessor of each county mentioned as affected in said instrument a statement of valuation of assessment to be levied against said instrument in such county. (Political Code, sect. 3678.)

In the matter of the valuation of its said lands for the purposes of taxation the defendant is and ever has been deprived of all

the benefits of the said laws which provide for the deduction of indebtedness secured by mortgage from the valuation of lands by reason of the provisions of section 4 of article XIII of the constitution of the State of California, and the action of assessors in pursuance thereof, while all natural persons and all corporations not quasi-public within the State of California are entitled to receive, and do receive, the full benefit of said laws and the deductions required to be made thereunder.

XV.

138 That on the 18th day of August, 1883, the State board of equalization of the State of California, pretending to act under and by virtue of the powers conferred upon it by sec. 10 of article XIII of the constitution of the State of California, did make a pretended assessment for the purposes of taxation for the fiscal year of said State then next ensuing upon the franchise, roadway, road-bed, rails, and rolling-stock of said railroad against defendant. Said pretended assessment was not made separately upon the franchise, roadway, road-bed, rails, and rolling-stock, or any properties of said railroad, but all of said property was blended together in making said assessment, which assessment was then and there so entered upon the minutes of said board. Said assessment is the assessment upon which the several taxes mentioned in the complaint herein are based, and no other assessment that the aforesaid was ever made of said property or any part thereof for said fiscal year. Said assessment included all property and kinds of property mentioned in section 3665 of the Political Code of California as amended March 9, 1883, except depots, station,
139 shops, and buildings erected upon the space covered by the right of way, which last-mentioned property was assessed, as provided in said section, by local assessors.

XVI.

That the State board of equalization, in making the said pretended assessment, pretended to assess to and against defendant the full cash value of said railroad, roadway, road-bed, rails, rolling-stock, and franchises as prescribed in said section 3665, without deducting therefrom the value of the mortgage, or any part thereof, given and existing thereon as aforesaid to secure the indebtedness of said company to the holders of said bonds, notwithstanding, as defendant avers, they had full knowledge of the existence of such mortgage.

XVII.

That in making said pretended assessment the State board of equalization did not deem or treat said mortgages as an interest in said property, but did assess the whole value of said property to the defendant in the same manner it would have done had there
140 been no mortgages thereon.

XVIII.

That under section — of article XIII of the constitution of California property of natural persons or corporations not quasi-public, having a mortgage, lien, or encumbrance thereon, is not assessed in full to the owner thereof, but the owner is only assessed for the value of the owner's interest in such property over and above the value of the mortgage, lien, or encumbrance. In the case of the property of railroad and other quasi-public corporations no such allowance or deduction is made, had, or allowed with respect to any mortgage, lien, or encumbrance; that the tenth section of article XIII of the constitution of the State of California provides the same mode for the assessment of the franchises, roadway, road-bed, rails, and rolling-stock of all railroads operated in more than one county, whether such property be owned by railroad or other quasi-public corporations, or by private corporations, or by natural persons.

XIX.

141 That at and before and ever since the adoption of the constitution of the State of California now in force there were and are existing under the laws of said State corporations of various kinds, formed for the purpose of and actually operating and doing business, holding and using and operating property in more than one county in said State, and that at all of said times there were and now are divers natural persons, residents of said State, operating property in more than one county in said State, and that at all of said times there were and now are railroads owned by corporations formed under the general laws of the State, and also by natural persons, which are only operated in one county; that corporations in said State of California now are and ever have been formed under general laws relating thereto, and railroad and all other corporations, except public corporations formed or organized for the government of a portion of the State, now are and ever have been designated by the laws of California as private corporations; that under the provisions of
142 said laws such corporations may be formed for any purpose for which individuals or natural persons may lawfully associate themselves together; that there now exists in California and ever have existed corporations formed under said laws for fire, marine, mutual life, health, and accident insurance, building, constructing, and operating railroads, wagon-roads, telegraphs, bridges, ferries, wharves, chutes, and piers, and for constructing and operating canals; for the purposes of acquiring lands in large tracts and distributing them as homesteads among the corporators; for savings and loans; for mining; for the sale and distribution of water in cities and towns for manufacturing, mechanical, and agricultural purposes; for benevolent, charitable, and educational purposes; for cemet[er]ies, agricultural fairs, and various other purposes.

That in said State there now are, and for more than three years last past have been, various railroads owned, operated, and controlled either by individuals, partnerships, or by private corpora-

tions other than railroad corporations, to wit, by mining and manufacturing corporations.

143 That there now is, and for more than three years last past has been, a railroad in use and operation extending from the city of Marysville, in the county of Yuba, to the town of Oroville, in the county of Butte, in said State, a distance of twenty-seven miles, which said road now is, and ever has been, operated in more than one county in this State, and is of the same gauge as the road of defendant, and has ever been operated for like uses and purposes; that said road, with all its equipments, now is, and for more than three years last past has been, in the ownership and under the operation and control of one N. D. Rideout, a citizen of the United States and a resident of the State of California; that there now is, and for more than three years last past has been, a railroad extending from the town of Santa Cruz, on the Pacific Ocean, and in the county of Santa Cruz eastward through said county and into the county of Monterey to the town of Pajaro, a distance of about twenty-one miles; that said road now is, and for a long time past has been, owned, operated, and used for like purposes for which the

144 defendant's road is owned, operated, and used, and that the same now is, and for a long time past has been, in the ownership and operated by the Pacific Improvement Company, a private corporation formed under the laws of the State of California, which said corporation is not, and never has been, a railroad or quasi-public corporation; that there are now, and for more than five years last past have been, divers other railroads owned and operated in said State by corporations other than railroad corporations, and by individuals and partnerships, and that all of said corporations, individuals, and partnerships are the owners of lands which are assessed by the local assessors of the various counties in which such lands are situated, and all are entitled under the laws of said State to the deductions provided for in said laws, and have been allowed such deductions.

XX.

That in making said pretended assessment the State board of equalization included the full value of all franchises and corporate powers held and exercised by the defendants.

145 XXI.

That said pretended assessment is the only assessment of said property, and the pretended tax for the non-payment of which this action is brought is founded upon said pretended assessment and upon no other.

XXII.

That on the 9th day of November, 1883, the defendant, while then and at all times denying all liability upon said pretended assessment, and claiming that all the proceedings had in relation thereto were in violation of law and the rights of defendant, tendered and offered to the said plaintiff the sum of $166,119.10 in United

States gold coin in part payment of the tax claimed in the complaint, with an agreement that the receipt of said sum should not prejudice the plaintiff in any legal rights; that the defendant afterwards brought said sum into court and offered the same to plaintiff and subjected the same to such orders or judgments as the court might make in the premises; that of the sum so
146 tendered it tendered specifically for the benefit of the State and on the amount claimed by the State the sum of $53,676, and on account of the various county taxes claimed it tendered sums as follows, to wit:

For the county of	Alameda the sum of	$10,264 86
Do.	Butte	8,094 36
Do.	Fresno	14,268 21
Do.	Merced	6,610 39
Do.	Nevada	8,696 25
Do.	Placer	21,291 86
Do.	Sacramento	5,837 01
Do.	San Francisco	860 82
Do.	San Joaquin	5,119 20
Do.	Santa Clara	1,377 51
Do.	Shasta	9,281 80
Do.	Sierra	887 97
Do.	Stanislaus	2,041 36
Do.	Sutter	1,798 74
Do.	Tehama	7,655 63
Do.	Tulare	2,615 70
Do.	Yuba	5,741 43

That defendant ever since said tender was made kept the same good; that afterwards, to wit, on the 29th day of September, 1884, in this court, upon motion of attorneys for plaintiff, an order was made that the defendant, within five days from said date, make
147 said tender good by paying to Edward C. Marshall, attorney general of the State of California, and one of the attorneys for plaintiff herein, the said sum of $166,119.10 in United States gold coin, to be by said Marshall, upon the receipt thereof, paid into the State treasury of the State of California for the benefit of the State of California and of the counties named in the respective amounts above specified, and it was then and there further ordered by said court, by consent of the parties to the action, that neither the payment nor the receipt of said sum should prejudice or affect any right of either party to this action to maintain or defend it as to the balance claimed in the complaint; that afterwards, to wit, on the 2nd day of October, 1884, in obedience to the said order, the defendant made said tender good by paying to the said Marshall the said sum of $166,119.10 for the uses and purposes and upon the terms and conditions mentioned in the said order.

XXIII.

148 That the board of equalization never at any time made or adopted any rule or regulation relative to the assessment or

valuation of railroad property of any kind; that said board never made or adopted any rule to govern or regulate its proceedings in the exercise of the powers conferred upon it by section ten of article XIII of the constitution of California.

Conclusions of Law.

From the foregoing facts the court finds as a conclusion of law that the defendant is entitled to judgment in its favor, with costs; and it is so ordered.

(Signed) LORENZO SAWYER,
Circuit Judge.

(Endorsed:) Filed Nov'r 10, 1884. L. S. B. Sawyer, clerk.

149 *Judgment.*

UNITED STATES OF AMERICA:

Circuit Court of the United States, Ninth Circuit, District of California.

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,
vs.
CENTRAL PACIFIC RAILROAD COMPANY (a Corporation), Defendant. } No. 3263.

This action came on regularly for trial by the court, a jury trial hereof having been waived by written stipulation of the parties hereto, and the evidence of the respective parties being adduced and the arguments of counsel had thereon, the cause was submitted to the court for consideration and decision, and the court, after due deliberation, having filed its findings in writing and ordered that judgment be entered herein for the defendant in accordance therewith, now, therefore, by virtue of the law and the finding aforesaid, it is considered by the court that the plaintiff take nothing by his action; that the defendant go hereof without day, and
150 that said defendant recover from said plaintiff its costs in this behalf expended, taxed at $—.

Entered this 10th day of November, 1884.

L. S. B. SAWYER, *Clerk.*

A true copy.
Attest:
[L. S.] L. S. B. SAWYER, *Clerk.*

(Endorsed:) Filed Nov. 10, 1884. L. S. B. Sawyer, clerk.

151 *Clerk's Certificate.*

UNITED STATES OF AMERICA:

Circuit Court of the United States, Ninth Circuit, District of California.

PEOPLE OF THE STATE OF CALIFORNIA
vs.
CENTRAL PACIFIC RAILROAD COMPANY.

I, Lorenzo S. B. Sawyer, clerk of the circuit court of the United States of the ninth judicial circuit within and for the district of California, do hereby certify that the foregoing papers hereto annexed constitute the judgment-roll in the therein-entitled action.

Witness my hand and the seal of said circuit court this 29 day of November, A. D. 1884.

[SEAL.] L. S. B. SAWYER, *Clerk*,
By F. D. MONCTON, *Deputy Clerk*,

Endorsed: Judgment-roll. Filed Nov. 10, 1884. L. S. B. Sawyer, clerk, by F. D. Moncton, deputy clerk.

152 *Appointment of D. M. Delmas as Att'y for Pl'ff, &c.*

In the Circuit Court of the United States, Ninth Circuit, District of California.

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,
vs.
THE CENTRAL PACIFIC RAILROAD CO., Defendant.

I hereby appoint D. M. Delmas, Esq., attorney for plaintiff in the above-entitled action in place of Messrs. James A. Waymire and W. T. Baggett.

JOHN P. DUNN,
State Controller.

(Endorsed:) Filed April 28, 1884. L. S. B. Sawyer, clerk.

153 *Authorization that James A. Waymire & Wm. T. Baggett Continue to Act as Att'ys, &c.*

In the Circuit Court of the United States in and for the Ninth Circuit, District of California.

THE PEOPLE OF THE STATE OF CALIFORNIA
vs.
THE CENTRAL PACIFIC RAILROAD COMPANY.

To James A. Waymire, Esq., and Wm. T. Baggett, Esq.

GENTLEMEN: You are hereby requested, authorized, and empowered to continue as attorneys of record for the plaintiff in the above-entitled cause, and, subject to my instructions, to exercise entire control of said cause.

San Francisco, April 28th, 1884.

E. C. MARSHALL,
Attorney General.

(Endorsed:) Filed April 28th, 1884. L. S. B. Sawyer, clerk, by F. D. Moncton, deputy clerk.

154 At a stated term, to wit, the February term, A. D. 1886, of the circuit court of the United States of America of the ninth judicial circuit in and for the district of California, held at the court-rooms in the city and county of San Francisco on Monday, the 26th day of May, in the year of our Lord one thousand eight hundred and eighty-four.

Present: The Honorable Lorenzo Sawyer, circuit judge.

Order that Hon. E. C. Marshall be Entered of Record as Att'y for Plaintiff, and D. M. Delmas, Esq., Substituted as Attorney for the Comptroller, &c.

THE PEOPLE OF THE STATE OF CALIFORNIA
vs.
THE CENTRAL PACIFIC RAILROAD COMPANY. } No. 3263.

A motion to substitute D. M. Delmas, Esq., for James A. Waymire and W. T. Baggett, Esq., as attorney for plaintiff, and a counter-motion of Hon. E. C. Marshall, attorney general, to retain
155 Messrs. Waymire and Baggett as his representatives, with power as attorneys of record to control said action heretofore argued and submitted, having been duly considered, it is now here ordered that Hon. E. C. Marshall, attorney general of the State of California, be, and he is hereby, directed to be entered as attorney for the plaintiff in the above-entitled action, with power to control the proceedings therein in all matters of difference between him and the other attorneys in the case; and it is further ordered that D. M. Delmas, Esq., be, and he is hereby, substituted as attorney for the comptroller instead of James A. Waymire and W. T. Baggett, Esqs., subject to the control of the action and proceedings therein by the said attorney general, as hereinbefore provided.

156 *Bond on Writ of Error.*

In the Supreme Court of the United States.

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff in Error,
vs.
THE CENTRAL PACIFIC RAILROAD COMPANY, a Corporation, Defendant in Error.

Know all men by these presents that we, Louis Marshall and H. A. Greene, are held and firmly bound unto The Central Pacific Railroad Company, defendant in error herein, in the sum of five hundred dollars, lawful money of the United States of America, to be paid to said The Central Pacific Railroad Company, its successors or assigns; to the payment of which, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

157 Sealed with our seals. Dated this 28 day of July, 1886.

Whereas the above-named The People of the State of California have prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered and entered by the circuit court of the United States of America for the district of California in the cause entitled The People of the State of California *vs.* The Central Pacific Railroad Company, No. 3263:

Now, therefore, the condition of this obligation is such that if the above-named The People of the State of California shall prosecute their said writ of error to effect and answer all costs if they shall fail to make good their plea, then this obligation shall be void; otherwise to remain in full force and virtue.

LOUIS MARSHALL, [SEAL.]
H. A. GREENE. [SEAL.]

Signed, sealed, and delivered in the presence of—
F. D. MONCKTON.

158 UNITED STATES OF AMERICA, }
District of California, } *ss:*

Louis Marshall and H. A. Greene, being duly sworn, each for himself deposes and says that he is a householder in said district and is worth the sum of five hundred dollars in lawful money of the United States of America, exclusive of property exempt from execution and over and above all debts and liabilities.

LOUIS MARSHALL.
H. A. GREENE.

Subscribed and sworn to before me this 28th day of July, 1886.

F. D. MONCKTON,
Commissioner of U. S. Circuit Court, District of California.

(Endorsed:) The form of the within bond and the sufficiency of the sureties therein are hereby approved. (Signed) Lorenzo Sawyer, circuit judge. Filed July 28th, 1886. L. S. B. Sawyer, clerk.

159 In the Circuit Court of the United States for the Northern District of California.

THE PEOPLE OF THE STATE OF CALIFORNIA }
vs. } No. 3263.
THE CENTRAL PACIFIC RAILROAD COMPANY. }

I, L. S. B. Sawyer, clerk of the circuit court of the United States of the ninth judicial circuit in and for the northern district of California, do hereby certify that the foregoing one hundred and fifty-eight written pages, numbered from 1 to 158, inclusive, are a full, true, and correct copy of the record and of all proceedings in the above and therein entitled cause, and that the same together constitute the return to the annexed writ of error.

Witness my hand and the seal of said circuit court this 2d day of September, A. D. 1886.

[The Seal of the Circuit Court, District of Cal'a.]

L. S. B. SAWYER, *Clerk.*

160 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States of the ninth judicial circuit in and for the district of California, Greeting:

Because in the record and proceedings and also in the rendition of the judgment of a plea which is in the said circuit court before you, between The People of the State of California, plaintiffs in error, and The Central Pacific Railroad Company, defendant in error, a manifest error hath happened, to the great damage of the said plaintiffs in error, as by *his* complaint appears, and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the city of Washington, in the District of Columbia, on the second Monday of October next, in the said Supreme Court to be there and then held, that, the record and proceedings aforesaid be[ing] inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 28th day of July, in the year of our Lord one thousand eight hundred and eighty-six, and of the Independence of the United States the one hundred and eleventh.

[The Seal of the Circuit Court, District of Cal'a.]

L. S. B. SAWYER,
Clerk of the Circuit Court of the United States for the District of California.

The above writ of error is hereby allowed.

LORENZO SAWYER,
U. S. Circuit Judge, Ninth Judicial Circuit.

161 [Endorsed:] No. 3263. United States Supreme Court. The People of the State of California, pl'ffs in error, *vs.* The Central Pacific Railroad Company, def't in error. Writ of error. Service of a copy of within admitted this 23d day of Aug., 1886. H. S. Brown, att'ys for def't in error. Filed September 2d, 1886. L. S. B. Sawyer, clerk.